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Compiled by
BION M. GREGORY
Legislative Counsel

CHAPTER 539

An act to add Chapter 2.5 (commencing with Section 110) to Division 1.5 of the Harbors and Navigation Code, relating to water pollution.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Chapter 2.5 (commencing with Section 110) is added to Division 1.5 of the Harbors and Navigation Code, to read:

CHAPTER 2.5. TBT-BASED ANTIFOULING PAINT

110. As used in this chapter:

(a) "Slow-leaching TBT-based marine antifouling paint" means a TBT-based marine antifouling paint, but not a coating, treatment, or compound, that releases tributyltin (TBT) at a measured rate equal to or less than five micrograms per square centimeter per day at steady state conditions determined under the Environmental Protection Agency testing procedure, as outlined in the agency's call-in notice of July 29, 1986, on tributyltin in antifouling paints under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.), except that, for purposes of this definition, the Department of Food and Agriculture may reduce the maximum permitted release rate of slow-leaching TBT-based marine antifouling paint to less than five micrograms per square centimeter per day at steady state conditions upon a finding by the State Water Resources Control Board, after a noticed public hearing, that the lower release rate is required to protect the waters of the state from contamination.

(b) "TBT-based marine antifouling paint or coating" means a paint, coating, treatment, or compound that contains tributyltin, an organotin, or a tri-organotin compound applied as a substitute for tributyltin, and that is intended to control fouling organisms in a freshwater or marine environment.

(c) "Vessel" means any watercraft used or capable of being used as a means of transportation on water.

111. Except as otherwise provided in this chapter, no person shall sell or use a TBT-based marine antifouling paint or coating in this state, and no person shall sell, rent, or lease in the waters of this state a vessel, fishing gear, or other item intended to be partially or completely submerged in water, if the vessel, gear, or other item has been painted or treated with a TBT-based marine antifouling paint or coating.

112. Nothing in this chapter requires the removal of any TBT-based marine antifouling paint or coating from any vessel,

fishing gear, or other item that was so painted or treated before January 1, 1988, but the vessel, gear, or other item shall not be repainted or retreated with any TBT-based marine antifouling paint or coating.

Fish capture nets treated with TBT-based marine antifouling paint or coating before January 1, 1988, shall not be used in state waters on or after January 1, 1993.

Fish culture pens used for rearing fish for human consumption treated with a TBT-based antifouling paint or coating shall not be used in state waters on or after January 1, 1989.

113. Slow-leaching TBT-based marine antifouling paint may be distributed, sold, and used in this state only if it meets one of the following criteria:

(a) It is paint that will be applied only to aluminum vessel hulls or to commercial or recreational vessels 25 meters or more in length.

(b) It is of a type commonly referred to as outboard or lower unit paint and is distributed or sold in a spray can in a quantity of 16 ounces avoirdupois or less.

114. Any violation of Section 111 or 112 is a misdemeanor.

115. This chapter shall become inoperative on the effective date of regulations adopted by the Department of Food and Agriculture which regulate TBT-based marine antifouling paints or coatings.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 540

An act relating to Monarch butterflies, and making an appropriation therefor.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

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

(a) The Monarch butterfly of North America (Danaus plexippus) is truly an international phenomenon. Both the eastern and western populations travel through Canada, the United States of America, and Mexico during their annual migration.

(b) Because of its vibrant beauty, large size, and migratory habits, the Monarch butterfly is among the best known insects of North America.

(c) The winter roosting sites for the western population are located almost exclusively in the coastal regions of California. Of the 80 known sites in this state, seven have been destroyed in the past three years.

(d) The government of Mexico, despite its current economic situation, recently took dramatic steps to safeguard the wintering grounds of the Monarch butterflies of eastern North America; therefore, the State of California should take similar action to protect the Monarch butterflies which migrate throughout western North America.

SEC. 2. The Department of Fish and Game shall prepare an inventory of the areas of critical habitat for winter roosting sites for Monarch butterflies on or before July 1, 1988. This inventory shall include, but not be limited to, maps identifying those areas, recommendations for protection of the habitat, and recommendations for potential acquisition of sites by the state.

SEC. 3. The sum of twelve thousand dollars ($12,000) is hereby appropriated from the California Environmental License Plate Fund to the Department of Fish and Game for the purposes of Section 2 of this act.

CHAPTER 541

An act to amend Sections 6503, 6511, 6511.7, 6527, 6529, 6534.9, 6535, 6545.1, 6592, 6628, 7332.5, and 7436 of, to add Sections 6534.8 and 6545.5 to, to repeal Sections 6506, 6595.5, 6607, and 6629 of, and to repeal Article 11 (commencing with Section 6640) of Chapter 6 of Division 3 of, the Business and Professions Code, relating to business and professions.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 6503 of the Business and Professions Code is amended to read:

6503. (a) As used in this chapter, "board" means the State Board of Barber Examiners.

(b) The board shall elect a president and vice president.

SEC. 2. Section 6506 of the Business and Professions Code is repealed.

SEC. 3. Section 6511 of the Business and Professions Code is amended to read:

6511. The board shall have authority to employ those examiners-field representatives, clerks, and other assistants as it may deem necessary to carry out this chapter.

SEC. 4. Section 6511.7 of the Business and Professions Code is

amended to read:

6511.7. The basic duties of an examiner-field representative shall be the administration of barber, barber instructor, and barber apprentice examinations, inspection of licensed barber shops and schools, and the assistance in the processing of formal disciplinary actions.

SEC. 4.5. Section 6527 of the Business and Professions Code is amended to read:

6527. (a) It is unlawful for any person, firm, or corporation to operate a barber college unless the person, firm, or corporation holds a valid certificate of registration issued by the board and unless the certificate is displayed at all times in a conspicuous place on the premises.

(b) Nothing in this chapter prohibits a barber from providing barber services to a sick, injured, mentally retarded, or incarcerated person while the sick, injured, mentally retarded, or incarcerated person is in a hospital, convalescent home, private residence, or prison, if the laws, rules, and regulations regarding sanitation and posting of a barber license are observed as specified in Sections 6522.5, 6523, 6565, 6572, and 6574; subdivisions (d), (f), (g), and (h) of Section 6578; and Section 6582.

SEC. 5. Section 6529 of the Business and Professions Code is amended to read:

6529. No raise in fees for any one category of fees imposed by the board shall exceed the sum of five dollars ($5) for any one category of fees except for delinquent licenses, which fees shall not exceed ten dollars ($10), and barber colleges, which fees shall not exceed twenty-five dollars ($25) except the barber college inspection fee which shall not exceed ten dollars ($10). No fee shall exceed the maximum amount allowable for fees for any purpose in this chapter.

SEC. 6. Section 6534.8 is added to the Business and Professions Code, to read:

6534.8. If an applicant fails to open a barber college within one year after approval of an application for registration, the application shall be considered to be abandoned. An application submitted after the abandonment of a former application shall be treated as a new application and shall be required to meet all of the requirements for an initial application for registration.

SEC. 7. Section 6534.9 of the Business and Professions Code is amended to read:

6534.9. Every person, firm or corporation operating a barber college shall notify the board 30 days prior to the change of location of the college.

SEC. 8. Section 6535 of the Business and Professions Code is amended to read:

6535. No college of barbering shall be approved by the board unless it requires as a prerequisite to admission thereto, completion of the ninth grade, or the equivalent education as determined by an examination conducted by an examining agency prescribed by the

board, and unless it requires as a prerequisite to graduation a course of instruction of not less than 1,500 hours to be completed within 30 months, at the rate of not more than eight hours in any one working day, except that a student may complete a service in process, with time credit, but not to exceed 30 additional consecutive minutes. The total number of weekly hours shall not exceed 40, except that the accumulated minutes necessary to complete a service in process shall be added thereto. The maximum weekly total of hours shall not exceed 42½.

The course of instruction shall consist of the fundamentals of the following subjects:

(a) Sanitation, antiseptics, sterilization, hygiene and bacteria. Instruction in these subjects shall be limited to their relation to barbering.

(b) Haircutting and shaving.

(c) Massaging of the scalp, face, and neck.

(d) Shampooing, and the applying of hair tonics, hairdressing preparations, and rinses.

(e) Facials and scalp massages or treatments with creams, lotions, oils or other cosmetic preparations either by hand or mechanical appliances, but such appliances shall not be galvanic nor faradic.

(f) Shop management, ethics, salesmanship, implements, and a brief study of the history of barbering.

(g) Laws and regulations governing the practice of barbering.

(h) Common skin and hair diseases of the scalp, face and neck.

(i) The structure and functions of the skin and hair of the scalp, face and neck.

(j) Cosmetic preparations used in the practice of barbering.

(k) Circulation, muscles, nerves and cells of the scalp, face and neck only as such subjects are related to massaging or other acts of barbering.

(*l*) Fundamentals of hair coloring and bleaching.

(m) Fundamentals of hair straightening (also known as hair relaxing).

(n) Hairpieces (toupees), measuring, fitting and servicing.

(o) Chemical waving of hair.

(p) Hair styling of all textures of hair. This service shall include individual style adaptation, razor hair styling and the use of the styling blower.

SEC. 9. Section 6545.1 of the Business and Professions Code is amended to read:

6545.1. An applicant is qualified to receive a certificate of registration to practice barbering who complies with each of the following:

(a) The applicant is at least 17 years of age.

(b) The applicant is not subject to denial pursuant to Section 480.

(c) The applicant has completed the proper grade in school as prescribed in Section 6546.5, or has an equivalent education to be determined by an examination conducted by an examining agency

prescribed by the board.

(d) The applicant has either of the following:

(1) A valid cosmetology certificate issued by the State Board of Cosmetology and proof of completion of a 400-hour course in a college approved by the board.

(2) Proof of completion of a 1,600-hour course in a cosmetology school licensed by the State Board of Cosmetology and proof of completion of a 400-hour course in a barber college approved by the board.

(e) The applicant provides such other information the board may require.

(f) The applicant has passed an examination conducted by the board.

(g) The applicant has completed and filed an acceptable application with the board and has paid the application, examination and certificate fees required by this chapter.

If the applicant fails to pass the examination, a new application may be filed, accompanied by the required application and examination fees, and another examination taken. In no event shall the applicant be permitted to practice barbering until such time as an examination is satisfactorily passed and a certificate of registration as a registered barber is received.

SEC. 10. Section 6545.5 is added to the Business and Professions Code, to read:

6545.5. If an applicant fails to complete his or her application within one year after it has been filed, or fails to take the examination within a one-year period after becoming eligible therefor, the application shall be considered abandoned. An application submitted after the abandonment of a former application shall be treated as a new application and shall be required to meet all of the requirements for initial license.

SEC. 11. Section 6592 of the Business and Professions Code is amended to read:

6592. The board, through its duly authorized representatives, shall issue a citation with respect to any violation for which an administrative fine may be assessed. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of this chapter alleged to have been violated. The administrative fine, if any, shall attach at the time the citation is written.

SEC. 12. Section 6595.5 of the Business and Professions Code is repealed.

SEC. 13. Section 6607 of the Business and Professions Code is repealed.

SEC. 14. Section 6628 of the Business and Professions Code is amended to read:

6628. All moneys received by the board under this chapter shall be paid to the Treasurer, at the end of each month, for deposit into the State Board of Barber Examiners' Fund.

SEC. 15. Section 6629 of the Business and Professions Code is repealed.

SEC. 16. Article 11 (commencing with Section 6640) of Chapter 6 of Division 3 of the Business and Professions Code is repealed.

SEC. 17. Section 7332.5 of the Business and Professions Code is amended to read:

7332.5. (a) The board shall admit to the examination for a certificate of registration and license as a cosmetology instructor, any person who has made an application to the board in the proper form, who has paid the fee required by this chapter, and who meets the following qualifications:

(1) Has had at least 600 hours of teacher training in an approved school in this state or equivalent training in an approved school in another state, or one year of practical experience within the previous three years in all branches of cosmetology, except the branch of electrology, in a licensed cosmetological establishment in this state, or equivalent experience in another state.

(2) Has completed the 12th grade, or an accredited senior high school course of study, in public schools of this state, or has equivalent education.

(3) Has not committed any acts or crimes constituting grounds for denial of a license under Section 480.

(4) Holds a valid California license as a cosmetologist.

(b) Each applicant shall submit an affidavit signed by his or her employers attesting to his or her experience.

(c) Each licensed cosmetology instructor shall complete 30 clock hours of continuing education in the teaching of vocational education during each two-year licensing period. This subdivision does not apply to a cosmetology instructor who teaches cosmetology on the campus of a California Community College, or a cosmetology instructor who has obtained a clear vocational education teaching credential pursuant to regulations of the Commission on Teacher Credentialing.

For the purposes of this subdivision, programs designed for continuing education in the "teaching of vocational education" may include, but not be limited to, the development of understanding and competency in the learning process, instructional techniques, curriculum and media, instructional evaluation, counseling and guidance, and the special needs of students.

The board may make exceptions from the requirements of this subdivision in emergency cases.

SEC. 18. Section 7436 of the Business and Professions Code is amended to read:

7436. (a) Licenses issued under this chapter, unless specifically excepted, shall be issued for a two-year period and shall expire at midnight on the last day of the month of the date of issuance established by the board.

(b) The board may establish procedures for administration of a two-year continuous renewal program. The program shall include,

but not be limited to, the establishment of a pro rata formula for the payment of fees by licentiates affected by the implementation of that program. The renewal program shall provide that a relatively equal number of licenses expire annually and in a manner as to best distribute the renewal and reregistration work of the board in a uniform manner.

(c) As a condition for the renewal of the license of a cosmetology instructor the board shall require instructors to periodically demonstrate their current competency through continuing education in the "teaching of vocational education," pursuant to subdivision (c) of Section 7332.5. The board shall adopt rules and regulations establishing standards for the approval of continuing education courses and for the effective administration and enforcement of this subdivision.

(d) Cosmetology instructors with an inactive license status shall not be required to meet the continuing education requirements of subdivision (c), but shall complete at least 30 hours of continuing education in the teaching of vocational education as a condition of reinstatement to active status.

CHAPTER 542

An act to amend Sections 20019.52 and 20586 of the Government Code, relating to public employees.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 20019.52 of the Government Code is amended to read:

20019.52. A member who is employed in a position that is reclassified from local miscellaneous to local safety and is made subject to a safety service retirement benefit, other than that provided in Section 21252.01, may make an irrevocable election in writing to remain subject to the miscellaneous service retirement benefit by filing a notice of such election with the board within 90 days after notification by the board.

SEC. 2. Section 20586 of the Government Code is amended to read:

20586. Notwithstanding any other provisions of this part, when any county superintendent of schools determines that because of an impending curtailment of, or change in the manner of performing service, the best interests of the county superintendent of schools would be served, a school member shall be eligible to receive additional service credit if the following conditions exist:

(a) The member is employed in a job classification or an

organizational unit designated by the county superintendent of schools and retires within any period designated in and subsequent to the effective date of the contract amendment provided the period is not less than 90 days nor more than 180 days.

(b) The county superintendent of schools transmits to the retirement fund an amount determined by the board which is equal to the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and the amount he or she would have received without such service credit. The transfer to the retirement fund shall be made in a manner and time period acceptable to the employer and the board.

(c) The county superintendent of schools shall certify that he or she is electing to exercise the provisions of this section, because of impending mandatory transfers, demotions, and layoffs that constitute at least 1 percent of the job classification, as designated by the county superintendent of schools, resulting from the curtailment of, or change in the manner of performing, its services.

(d) The county superintendent of schools shall certify that it is his or her intention at the time that this section is made operative that if any early retirements are granted after receipt of service credit pursuant to this section, that any vacancies thus created or at least one vacancy in any position in any organizational unit shall remain permanently unfilled thereby resulting in an overall reduction in the work force of such organizational unit.

The amount of service credit shall not be more than two years regardless of credited service and shall not exceed the number of years intervening between the date of his or her retirement and the date he or she would be required to be retired because of age.

A county superintendent of schools which elects to make the payment prescribed by subdivision (b) shall make such payment with respect to all eligible employees who retire during the specified period.

This section shall not be applicable to any member otherwise eligible if such member receives any unemployment insurance payments during the specified period.

Any member who qualifies under this section, upon subsequent reentry to the system shall forfeit the service credit acquired under this section.

This section shall not apply to any member who is not employed by the county superintendent of schools during the period designated in subdivision (a) and who has less than five years of service credit.

This section shall not apply to any county superintendent of schools unless and until the county superintendent of schools elects to be subject to the provision of this section by amendment to the contract made in the manner prescribed for approval of contracts, except an election among the employees is not required, or, in the case of contracts made after the effective date of this section, by express provision in such contract making the county superintendent

of schools subject to the provisions of this section.

Notwithstanding Section 20740, an election to become subject to this section shall not exclude a county superintendent of schools from the definition of "employer" for purposes of Section 20740.

This section shall remain in effect only until September 29, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before that date deletes or extends that date.

SEC. 3. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 543

An act to add Section 199.25 to the Health and Safety Code, relating to health.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 11, 1987]

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

SECTION 1. Section 199.25 is added to the Health and Safety Code, to read:

199.25. Notwithstanding Section 199.21 or any other provision of law, no physician and surgeon who has ordered a test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome and who has the results of the test shall be held criminally or civilly liable for disclosing to a person believed to be the spouse of a patient that the patient has tested positive on a test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome.

This section is permissive on the part of the attending physician, and all requirements and other authorization for the disclosure of test results to detect antibodies to the probable causative agent of acquired immune deficiency syndrome are limited to the provisions contained in this chapter, Chapter 1.12 (commencing with Section 199.30) and Sections 1603.1 and 1603.3.

CHAPTER 544

An act to amend Section 24300 of the Government Code, relating to county offices.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 24300 of the Government Code is amended to read:

24300. By ordinance the board of supervisors may consolidate the duties of certain of the county offices in one or more of these combinations:

(a) Sheriff and tax collector.
(b) Auditor and recorder.
(c) County clerk, auditor, and recorder.
(d) County clerk and public administrator.
(e) County clerk and recorder.
(f) County clerk and auditor.
(g) Treasurer and tax collector.
(h) Treasurer and recorder.
(i) Treasurer and assessor.
(j) Treasurer and public administrator.
(k) Public administrator and coroner.
(*l*) District attorney and public administrator.
(m) District attorney and coroner.
(n) Sheriff and coroner.
(o) Sheriff and public administrator.
(p) County agricultural commissioner and county sealer of weights and measures.
(q) Road commissioner and surveyor. A county may create an office entitled public works director, combining the duties of road commissioner and surveyor and any other compatible duties not legally required to be performed by another county officer.

By the ordinance which consolidates the duties of the appointive county offices described in subdivision (p), notwithstanding Section 2122 and Sections 2181 to 2187, inclusive, of the Food and Agricultural Code, and Sections 12200 and 12214 of the Business and Professions Code, the board of supervisors may provide that the first term only of the newly consolidated office expires when the first of the remaining unexpired terms of the two unconsolidated offices would have expired. Where a vacancy in either of the unconsolidated offices exists the term of office of the newly consolidated office shall be the longer of the remaining unexpired terms.

CHAPTER 545

An act to add Section 642.1 to the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 642.1 is added to the Unemployment Insurance Code, to read:

642.1. (a) "Employment" does not include service performed by a full-time student employed by an organized camp, as defined in Section 18897 of the Health and Safety Code and Section 3306(c)(20) of Title 26 of the United States Code.

(b) "Full-time student" for purposes of this section means either of the following:

(1) The individual is enrolled as a full-time student of an educational institution.

(2) The individual is between academic years or terms under both of the following criteria:

(A) The individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term.

(B) There is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (A).

(c) For purposes of determining whether an individual is a full-time student under this section the construction given to the corresponding definition of "full-time student" contained in Section 3306(q) of Title 26 of the United States Code shall apply.

CHAPTER 546

An act to amend Section 2096 of the Business and Professions Code, relating to physicians and surgeons.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 2096 of the Business and Professions Code is amended to read:

2096. In addition to other requirements of this chapter, before a physician's and surgeon's license may be issued, each applicant, including an applicant applying pursuant to Article 5 (commencing

with Section 2100), shall show by evidence satisfactory to the Division of Licensing that he or she has satisfactorily completed at least one year of postgraduate training, which includes at least four months of general medicine, in an approved postgraduate training program.

The amendments made to this section at the 1987 portion of the 1987–88 session of the Legislature shall not apply to applicants who completed their one year of postgraduate training on or before July 1, 1990.

CHAPTER 547

An act to amend Sections 11512 and 11704 of the Food and Agricultural Code, relating to pest control.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 11512 of the Food and Agricultural Code is amended to read:

11512. Except as provided in Section 11512.5, the proceedings for all hearings conducted by the director pursuant to this division shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The director shall have all of the powers which are granted in that chapter.

SEC. 2. Section 11704 of the Food and Agricultural Code is amended to read:

11704. (a) A person who is regularly engaged in the business of maintenance gardening and who desires to engage in pest control for hire incidental to that business shall qualify for an agricultural pest control license in the maintenance gardener category by passing the certified commercial applicators examination in both the laws and regulation and the landscape maintenance categories.

(b) The maintenance gardener category shall be limited to pest control in ornamental and turf plantings indoors, in commercial parks, or surrounding structures. A contract or verification that the pest control operation is incidental and that maintenance gardening is the primary purpose shall be immediately submitted to the commissioner or director upon request.

(c) An application for a license limited to the maintenance gardener category shall be accompanied by a fee of fifty dollars ($50).

CHAPTER 548

An act to amend Section 982 of, and to add Sections 135.1 and 135.2 to, the Unemployment Insurance Code, relating to unemployment.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 135.1 is added to the Unemployment Insurance Code, to read:

135.1. (a) A new employing unit shall not be created when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise.

(b) Control of a business enterprise may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.

(c) A continuity of control will exist if one or more persons, entities, or other organizations controlling the business enterprise remains in control of the business enterprise after an acquisition or change in form. Evidence of continuity of control shall include, but not be limited to, changes of an individual proprietorship to a corporation, partnership, association, or estate; a partnership to an individual proprietorship, corporation, association, estate, or the addition, deletion, or change of partners; a corporation to an individual proprietorship partnership, association, estate, or to another corporation or from any form to another form.

(d) An employing unit described in subdivision (a) shall continue to be the same employer for the purposes of this code as before the acquisition or change in form.

(e) This section shall not modify the provisions of Article 2 (commencing with Section 1731) of Chapter 7.

(f) This section shall be subject to subdivision (e) of Section 982 and subdivision (d) of Section 1127.5.

SEC. 2. Section 135.2 is added to the Unemployment Insurance Code, to read:

135.2. (a) If two or more business enterprises are united by factors of control, operation, and use, the director may determine that the business enterprises are one employing unit.

(1) Control of a business enterprise shall include, but not be limited to, ownership of a majority interest in an organization, ownership of the assets used to conduct the business enterprise of the organization, security arrangements or lease arrangements

regarding the assets used to conduct the business enterprise of the organization, or contract when the ownership, stated arrangements, or contract provide for or allow operation of the business enterprise.

(2) Operation of the business enterprise, includes, but is not limited to, management, personnel policies, operating procedures, pricing, collections, and financing of the business enterprise.

(3) Control of two or more business enterprises shall be united if the majority interest in, or control of, each organization is in one individual, entity, association, or other organization.

(4) Unity of operation is evidenced by central financing, accounting, and management of each business enterprise which includes, but is not limited to, common management, personnel policies, operating procedures, pricing, collections, and financing.

(5) The use of two or more business enterprises shall be united if they share a general system of operation and the enterprises are organized for common purposes, and each is coordinated with, or is a part of, the entire operation.

(b) This section shall be subject to subdivision (e) of Section 982 and subdivision (d) of Section 1127.5.

SEC. 3. Section 982 of the Unemployment Insurance Code is amended to read:

982. (a) Except as provided in subdivision (b), no employer shall be eligible for a contribution rate of more or less than 3.4 percent for any rating period unless his or her reserve account has been subject to benefit charges during the period of 12 complete consecutive calendar quarters ending on the computation date for that rating period and he or she is qualified under Sections 977 and 977.5.

(b) No new employer shall be eligible for a contribution rate of more or less than 3.4 percent unless his or her reserve account has been subject to benefit charges during the period of 12 complete consecutive calendar months ending on the computation date and the new employer is qualified under Sections 977 and 977.5.

(c) For the purposes of this section "new employer" means any of the following:

(1) An employer who first qualifies as an employer after the 1969 calendar year, and whose account is continuously subject to benefit charges from the date of first chargeability, except that a successor employer under Section 1051 is not a new employer if the successor applies for or obtains the transfer of the reserve account or part thereof of a predecessor who is not a new employer.

(2) An employer whose entire reserve account has been transferred to a successor under Article 5 (commencing with Section 1051) of Chapter 4 of this part.

(3) An employer whose reserve account has been canceled pursuant to Section 1029.

(d) Section 905 applies to a new employer, except that for the purposes of this section "average base payroll" means:

(1) The payroll in the calendar year immediately preceding the computation date for a new employer with a payroll only in that

calendar year.

(2) The quotient obtained by dividing by two the total amount of taxable wages paid by a new employer during the most recent period of two consecutive calendar years immediately preceding the computation date, for a new employer with a payroll only in each of, or only in the first of, the two consecutive calendar years.

(e) The contribution rate of an employer, for any period prior to January 1, 1988, shall not be changed, other than by the provisions of Sections 977 and 977.5, when the director makes a determination, pursuant to Section 135.1 or 135.2, because of arrangements entered into or business activities conducted between January 1, 1984, and January 1, 1986.

SEC. 4. The Employment Development Department shall adopt administrative regulations to carry out the purposes of this act.

CHAPTER 549

An act to add Section 33319 to the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

SECTION 1. The Legislature finds and declares that the overall health of the children of the State of California is of the utmost importance and that too many children suffer from health problems which do not receive prompt medical attention. The Legislature further finds that public schools are in a unique position to improve the health of the children of California through regular screening and early detection of health problems. It is the intent of the Legislature in enacting this statute, to assist schools and school districts to improve the health of their pupils and to thereby increase the chances for educational success of those pupils.

SEC. 2. Section 33319 is added to the Education Code, to read:

33319. The State Department of Education shall encourage and assist school districts to improve and monitor the health of their pupils. The department shall provide guidance and assist school districts to secure the voluntary assistance of local health professionals, schools of medicine, schools of public health, schools of nursing, voluntary health agencies, and other appropriate entities in order to provide pupil health screening and appropriate medical referrals as well as to provide valuable health information to pupils and their parents. The department shall encourage school districts to contact and cooperate with the State Maternal, Child, and Adolescent Health Board, with local maternal, child, and adolescent

health boards, and child health and disability prevention programs established pursuant to Article 3.4 (commencing with Section 320) of Part 1 of Division 1 of the Health and Safety Code.

As part of this assistance, the State Department of Education shall provide information and guidance to schools which request the information and guidance, to establish "Health Days" in order to provide screenings for common health problems among pupils as well as to provide information to pupils and parents on prevention of illness, proper nutrition, and other aspects of good health. The Health Days should be organized and staffed by school nurses working in cooperation with volunteers from schools of medicine, schools of public health, schools of nursing, voluntary health agencies, health professionals, local maternal, child, and adolescent health boards, and other appropriate entities. All medical screenings and services conducted pursuant to this section shall be conducted in accordance with the provisions of Chapter 9 (commencing with Section 49400) of Part 27.

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:

It is necessary to improve the health of pupils of school districts as soon as possible.

CHAPTER 550

An act to add Section 1367.65 to the Health and Safety Code, to add Sections 10123.81 and 11512.10 to the Insurance Code, and to add Section 14132.16 to the Welfare and Institutions Code, relating to health insurance.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 11, 1987]

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

SECTION 1. Section 1367.65 is added to the Health and Safety Code, to read:

1367.65. On or after January 1, 1988, every group health care service plan contract which is issued, amended, or renewed, and which includes coverage for mastectomy and prosthetic devices and reconstructive surgery incident to mastectomy described in Section 1367.6 shall also be deemed to provide coverage for mammography for screening or diagnostic purposes upon the referral of the patient's physician.

Nothing in this section shall be construed to establish a new mandated benefit or to prevent application of deductible or copayment provisions in an existing policy or plan. The Legislature

intends in this section to provide that mammography services are deemed to be covered if the policy or plan includes coverage for mastectomy and reconstructive surgery.

SEC. 2. Section 10123.81 is added to the Insurance Code, to read:

10123.81. On or after January 1, 1988, every group policy of disability insurance or self-insured employee welfare benefit plan which is issued, amended, or renewed, and which includes coverage for mastectomy and prosthetic devices and reconstructive surgery incident to the mastectomy described in Section 10123.8 shall also be deemed to provide coverage for at least the following, upon the referral of a patient's physician for breast cancer screening or diagnostic purposes:

(a) A baseline mammogram for women age 35 to 39, inclusive.

(b) A mammogram for women age 40 to 49, inclusive, every two years or more frequently based on the women's physician's recommendation.

(c) A mammogram every year for women age 50 and over.

Nothing in this section shall be construed to require a group policyholder to cover the surgical procedure known as mastectomy or to prevent application of deductible or copayment provisions contained in the policy or plan.

SEC. 3. Section 11512.10 is added to the Insurance Code, to read:

11512.10. On or after January 1, 1988, every nonprofit hospital service contract which is issued, amended, or renewed, and which includes coverage for mastectomy and prosthetic devices and reconstructive surgery incident to the mastectomy described in Section 11512.15 shall also be deemed to provide coverage for mammography for screening or diagnostic purposes upon the referral of the patient's physician.

Nothing in this section shall be construed to require a group policyholder to cover the surgical procedure known as mastectomy or to prevent application of deductible or copayment provisions contained in the policy or plan.

SEC. 4. Section 14132.16 is added to the Welfare and Institutions Code, to read:

14132.16. Mammography for screening or diagnostic purposes upon the referral of a patient's physician shall be covered under this chapter on or after January 1, 1988, to the extent required or permitted by federal law.

CHAPTER 551

An act to amend Section 11346.53 of the Government Code, relating to small business.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 11346.53 of the Government Code is amended to read:

11346.53. (a) If a state agency in proposing to adopt or amend any administrative regulation, determines that the action may have a significant adverse economic impact on small business, it shall include the following information in the notice of proposed action:

(1) Identification of the types of small businesses that would be affected.

(2) A description of the projected reporting, recordkeeping and other compliance requirements that would result from the proposed action.

(3) The following statement: "The (name of agency) finds that the (adoption/amendment) of this regulation may have a significant adverse economic impact on small businesses. The (name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on small business and invites you to submit such proposals. Submissions may include the following considerations:

"(A) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to small businesses.

"(B) Consolidation or simplification of compliance and reporting requirements for small businesses.

"(C) The use of performance standards rather than design standards.

"(D) Exemption or partial exemption from the regulatory requirements for small businesses."

(b) The state agency proposing to adopt or amend any regulation shall refer in the notice to any studies or relevant data which were relied upon in making the determination that the regulation has no adverse impact.

(c) If a state agency in adopting or amending any administrative regulation determines that the action will not have a significant adverse economic impact on small business, it shall make such a declaration in the notice of proposed action.

(d) An agency's determination and declaration that a proposed regulation may have or will not have a significant, adverse impact on small businesses shall not be grounds for the office to refuse to publish the notice of proposed action.

(e) A state agency shall also include in the notice of proposed action a statement of the potential cost impact of the proposed action on private persons or businesses directly affected, other than small businesses as defined in subdivision (e) of Section 11342, as considered by the agency during the regulatory development process. If the cost impact of the action is expected to be insignificant, or was not considered in the development process, the agency shall so indicate.

For purposes of this subdivision "cost impact" means the reasonable range of costs, or a description of the type and extent of costs, direct or indirect, which a representative private person or business necessarily incurs in reasonable compliance with the proposed action.

(f) No administrative regulation which requires a report shall apply to small businesses as defined in subdivision (e) of Section 11342, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to small businesses.

This subdivision applies only to administrative regulations adopted on or after January 1, 1988.

CHAPTER 552

An act to amend Section 26708 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987]

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

SECTION 1. Section 26708 of the Vehicle Code is amended to read:

26708. (a) (1) No person shall drive any motor vehicle with any object or material placed, displayed, installed, affixed, or applied upon the windshield or side or rear windows.

(2) No person shall drive any motor vehicle with any object or material placed, displayed, installed, affixed, or applied in or upon the vehicle which obstructs or reduces the driver's clear view through the windshield or side windows.

(3) This subdivision applies to a person driving a motor vehicle with the driver's clear vision through the windshield, or side or rear windows, obstructed by snow or ice.

(b) This section does not apply to:

(1) Rearview mirrors.

(2) Adjustable nontransparent sunvisors which are mounted forward of the side windows and are not attached to the glass.

(3) Signs, stickers, or other materials which are displayed in a

7-inch square in the lower corner of the windshield farthest removed from the driver, signs, stickers, or other materials which are displayed in a 7-inch square in the lower corner of the rear window farthest removed from the driver, or signs, stickers, or other materials which are displayed in a 5-inch square in the lower corner of the windshield nearest the driver.

(4) Side windows which are to the rear of the driver.

(5) Direction, destination, or termini signs upon a passenger common carrier motor vehicle, providing such signs do not interfere with the driver's clear view of approaching traffic.

(6) Rear window wiper motor.

(7) Rear trunk lid handle or hinges.

(8) The rear window or windows, when the motor vehicle is equipped with outside mirrors on both the left- and right-hand sides of the vehicle that are so located as to reflect to the driver a view of the highway through each mirror for a distance of at least 200 feet to the rear of the vehicle.

(9) A clear, transparent lens affixed to the side window opposite the driver on a vehicle greater than 80 inches in width and which occupies an area not exceeding 50 square inches of the lowest corner toward the rear of that window and which provides the driver with a wide-angle view through the lens.

(10) Sun screening devices meeting the requirements of Section 26708.2 installed on the side windows on either side of the vehicle's front seat, if the driver or a passenger in the front seat has in his or her possession a letter or other document signed by a licensed physician and surgeon certifying that the person must be shaded from the sun due to a medical condition, or has in his or her possession a letter or other document signed by a licensed optometrist certifying that the person must be shaded from the sun due to a visual condition. The devices authorized by this paragraph shall not be used during darkness.

(c) Notwithstanding subdivision (a), transparent material may be installed, affixed, or applied to the topmost portion of the windshield if:

(1) The bottom edge of the material is at least 29 inches above the undepressed driver's seat when measured from a point 5 inches in front of the bottom of the backrest with the driver's seat in its rearmost and lowermost position with the vehicle on a level surface.

(2) The material is not red or amber in color.

(3) There is no opaque lettering on the material and any other lettering does not affect primary colors or distort vision through the windshield.

(4) The material does not reflect sunlight or headlight glare into the eyes of occupants of oncoming or following vehicles to any greater extent than the windshield without the material.

CHAPTER 553

An act to add Section 19549.11 to the Business and Professions Code, relating to horseracing.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 19549.11 is added to the Business and Professions Code, to read:

19549.11. Notwithstanding Section 19549, the board may annually allocate within the state a maximum of 20 weeks of Arabian racing at the California Exposition and State Fair or a county or district agricultural association fair.

CHAPTER 554

An act to amend Section 22511.9 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987]

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

SECTION 1. Section 22511.9 of the Vehicle Code is amended to read:

22511.9. (a) A disabled veteran is a veteran who, as a result of injury or disease suffered while on active service with the armed forces of the United States:

(1) Has a disability which has been rated, by the United States Veterans' Administration or the military service from which the veteran was discharged, at 100 percent due to a diagnosed disease or disorder which substantially impairs or interferes with mobility.

(2) Is so severely disabled as to be unable to move without the aid of an assistant device.

(3) Has lost, or has lost use of, one or more limbs or has suffered permanent blindness as defined in Section 19153 of the Welfare and Institutions Code.

(b) A disabled veteran shall be allowed to park for unlimited periods in a restricted zone described in subdivision (e) of Section 21458. A disabled veteran shall be allowed to park for unlimited periods in parking zones restricted as to the length of time parking is permitted as indicated by a sign erected pursuant to a local ordinance. A disabled veteran shall be allowed to park in any metered parking space without being required to pay any parking

meter fees. This section does not apply to those zones in which the stopping, parking, or standing of all vehicles is prohibited absolutely by state law or local ordinance or which are reserved for special types of vehicles.

(c) As a condition to this privilege, the vehicle shall display a distinguishing license plate which shall be issued for a vehicle registered to the disabled veteran. The distinguishing license plate shall be issued without additional fees by the Department of Motor Vehicles pursuant to procedures adopted by the department.

(d) Any disabled veteran may also apply to the Department of Motor Vehicles for the issuance of a distinguishing placard issued pursuant to Section 22511.5. The placard may be used in lieu of the distinguishing license plate for parking purposes described in subdivision (b) when displayed on the dashboard of a vehicle. It is the intent of the Legislature to hereby encourage the use of these distinguishing placards which provide law enforcement officers with a more readily recognizable symbol for distinguishing vehicles qualified for the parking privilege.

(e) Prior to issuing a disabled veteran a distinguishing license plate or placard, the Department of Motor Vehicles may require an applicant to submit a certificate signed by a physician or surgeon substantiating the disability.

(f) No disabled veteran is eligible for more than one placard at any time.

(g) A disabled veteran shall be allowed to park a vehicle displaying a distinguishing disabled veteran license plate or placard issued by a foreign jurisdiction with the same parking privileges authorized in this code as a vehicle issued a distinguishing disabled veteran license plate or displaying a placard issued pursuant to subdivision (d) by the Department of Motor Vehicles.

CHAPTER 555

An act to add Section 10195.5 to the Insurance Code, relating to insurers.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987]

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

SECTION 1. Section 10195.5 is added to the Insurance Code, to read:

10195.5. In addition to any other requirements of law, including Section 10195, the following shall apply to an insurance policy to supplement Medicare or to an insurance policy covering long-term care as defined in Section 9110 of the Welfare and Institutions Code:

(a) The insurer shall not require an amount greater than one

month's premium to be submitted with an application for the policy of insurance if interim coverage is not provided. If interim coverage is provided, the insurer shall not require an amount greater than two months' premium for that purpose. No further premiums may be collected until the policy is delivered to the applicant.

(b) The insurer shall notify the applicant for the insurance policy within 45 days from the date the insurer or insurer's authorized representative or producer receives the application and the amount as to whether or not the applicant will be issued a policy of insurance. If the applicant is not so notified, the insurer or insurer's authorized representative or producer shall pay interest to the applicant on the funds that the applicant submitted with the application, at the legal rate of interest on judgments as provided in Section 685.010 of the Code of Civil Procedure, from the date the insurer or insurer's authorized representative or producer received those funds until they are refunded to the applicant or are applied toward the premium.

CHAPTER 556

An act to add Sections 53100.5, 53119, and 53120 to the Government Code, and to amend Section 41007 of the Revenue and Taxation Code, relating to emergency telephone systems.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 53100.5 is added to the Government Code, to read:

53100.5. The Legislature hereby finds and declares:

(a) The Communications Division of the Department of General Services is currently in the process of updating its implementation of "911" emergency phone service to all areas of California.

(b) The improvements to the emergency "911" service will enable the law enforcement agency receiving the "911" call to determine the exact location of the caller upon connection of the call.

(c) The communications division provides for the enhancement of emergency telephone systems of cities within the respective counties based on the population density of the counties, with those counties with greater density receiving enhanced "911" emergency service first. Most rural telephone companies serve sparsely populated areas, averaging only 14 telephones per square mile.

(d) Many of the telephone corporations in the rural areas of California are capable of receiving enhanced "911" emergency telephone service, but are not scheduled for improvements within

the next five years because of their population density.

(e) Telephone customers in the rural areas are generally not close to emergency services providers and are dependent on the telephone to contact those providers.

(f) It is in the state's interest expeditiously to provide enhanced "911" emergency telephone service to the rural areas of California upon reaching those counties by the present system, which is based on density.

SEC. 2. Section 53119 is added to the Government Code, to read:

53119. Any telephone corporation serving rural telephone areas which cannot currently provide enhanced "911" emergency telephone service capable of selective routing, automatic number identification, or automatic location identification shall present to the communications division a comprehensive plan detailing a schedule by which those facilities will be converted to be compatible with the enhanced emergency telephone system.

SEC. 3. Section 53120 is added to the Government Code, to read:

53120. The communications division shall not delay implementation of the enhanced "911" emergency telephone system in those portions of cities or counties, or both, served by a local telephone corporation that has equipment compatible with the enhanced "911" emergency telephone system.

SEC. 4. Section 41007 of the Revenue and Taxation Code is amended to read:

41007. (a) "Service supplier" shall mean any person supplying intrastate telephone communication services pursuant to California intrastate tariffs to any service user in this state.

(b) On and after January 1, 1988, "service supplier" also includes any person supplying intrastate telephone communications services for whom the Public Utilities Commission, by rule or order, modifies or eliminates the requirement for that person to prepare and file California intrastate tariffs.

CHAPTER 557

An act to add Section 6032 to the Business and Professions Code, relating to attorneys, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 11, 1987]

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

SECTION 1. Section 6032 is added to the Business and Professions Code, to read:

6032. (a) The board shall conduct a scientifically valid survey of a representative sample of the active membership for the purpose of

compiling data on the subject of legal malpractice insurance.

Members shall fully and truthfully complete the survey or be subject to those discipline measures prescribed by the board. Survey responses shall be confidential.

(b) The board shall submit a final report on the results of the survey to the Legislature on or before December 15, 1987.

(c) For the 1988–89 fiscal year, the board may increase the annual membership fee fixed by subdivision (a) of Section 6140 by an additional amount not to exceed one dollar ($1). This additional amount shall only be applied for costs incurred by the board in complying with the requirements of this section.

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:

Due to a crisis relating to malpractice insurance costs in the legal profession, it is necessary to obtain the data specified in this act as soon as possible.

CHAPTER 558

An act to amend Sections 1339.62 and 1339.63 of the Health and Safety Code, relating to respite care.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 11, 1987]

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

SECTION 1. Section 1339.62 of the Health and Safety Code is amended to read:

1339.62. It is the intent of the Legislature to establish a demonstration program to facilitate admissions to licensed general acute care hospitals, skilled nursing facilities, and intermediate care facilities to provide rest and relief for families and others who are caring for a relative or other individual in the community. Temporary admissions through respite provide these applicants and their families with temporary relief from their constant vigil while frail elderly, functionally impaired, developmentally disabled, and mentally disordered persons continue to receive the responsible help and supervision they need. Respite care can reduce the need for institutionalizing persons, since caretakers are able to take a break from their duties when needed.

It is further the intent of the Legislature that licensed general acute care hospitals, skilled nursing facilities, and intermediate care facilities may fill unused capacity to provide respite care for frail elderly, functionally impaired, developmentally disabled, and mentally disordered persons.

The purpose of establishing this program on a demonstration basis is to enable the State Department of Health Services to design model standards that facilitate the admissions process for respite care and ensure the health and safety of clients being cared for on a respite care basis.

The Legislature finds and declares that such respite care programs should be designed to be tailored to and responsive to the specific needs of those individuals requiring these services. The Legislature further recognizes that the needs of the frail elderly, functionally impaired, and developmentally disabled may be very different and diverse from the needs of mentally disordered persons. Therefore, standards and regulations adopted pursuant to this article shall ensure any mixing of patients within the respite care units must address, and be consistent with, and responsive to the special needs of the particular patient populations and age group being served.

SEC. 2. Section 1339.63 of the Health and Safety Code is amended to read:

1339.63. The department shall administer a three-year demonstration program for the purpose of providing respite care services to frail elderly, functionally impaired, developmentally disabled, and mentally disordered persons in at least one of each of the following licensed health facilities, not to exceed nine facilities:

(a) General acute care hospitals.

(b) Skilled nursing facilities.

(c) Intermediate care facilities.

CHAPTER 559

An act to amend Section 69591 of the Government Code, and to repeal Section 2 of Chapter 1587 of the Statutes of 1982, relating to courts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

SECTION 1. The Legislature hereby declares that the County of Orange has satisfied the conditions contained in Section 2 of Chapter 1587 of the Statutes of 1982 and accordingly no transfer of title to the state has or will occur pursuant thereto. The sublease agreement, HS29B-101, dated November 22, 1985, between the State of California and the Orange County Harbors, Beaches, and Parks District which provides space for the Fourth Appellate District Court of Appeal in the old courthouse is hereby rescinded. Neither party shall be entitled to any compensation or reimbursement thereunder. Neither the County of Orange nor the Orange County

Harbors, Beaches, and Parks District shall be liable to the state for moneys expended to improve the old courthouse nor shall the state be liable for expenditures made by the county or district for tenant improvements therein. There shall be no obligation to provide space in the old courthouse in Santa Ana for use by the court of appeal. Notwithstanding any other provision of law, the old courthouse may be used for any superior court, municipal court, museum, or other county or harbors, beaches, and parks district purpose, provided that no alteration shall be made to the property which unduly reduces the property's historic integrity.

SEC. 2. Section 2 of Chapter 1587 of the Statutes of 1982 is repealed.

SEC. 3. Section 69591 of the Government Code is amended to read:

69591. In the County of Orange there shall be 54 judges of the superior court.

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:

This act is necessitated by the increased space requirements of the Fourth Appellate District Court of Appeal which can no longer be adequately satisfied by space inside the old courthouse. The sublease agreement must be terminated so that the state can seek adequate space in another facility and the county can use the old courthouse for other purposes.

CHAPTER 560

An act to amend Sections 36951, 36952, and 37155 of, and to add Sections 37155.1, 37155.2, and 37155.3 to, the Water Code, relating to water districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 11, 1987]

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

SECTION 1. Section 36951 of the Water Code is amended to read:

36951. As soon as possible after the assessments, or any installment thereof, become delinquent, the tax collector shall publish a notice containing all of the following:

(a) A description of the delinquent property.

(b) The name of the assessee.

(c) The amount of the assessments and penalties due on the property.

(d) The amount of the assessments and penalties delinquent on the property.

(e) A statement that unless the delinquent assessments and penalties are paid at the district office by 12 noon on the date stated in the notice, the delinquent property will, on that date, be sold to the district for nonpayment of the delinquent assessments and penalties.

(f) A statement that subsequent to the sale of the delinquent property to the district, the property may be redeemed by payment of the amount specified in Section 37150 and, if applicable, Section 37155.2 or, if the district has elected pursuant to Chapter 7 (commencing with Section 37175) to permit installment redemption pursuant to that chapter, that the delinquent property may be redeemed under an installment plan of redemption.

(g) A statement of the name, address, and telephone number of the official who will furnish all information concerning redemption.

(h) A statement that after three years from the date of sale of the delinquent property to the district the right of redemption may be terminated upon execution and delivery to the district of a collector's deed pursuant to Chapter 6 (commencing with Section 37150).

SEC. 2. Section 36952 of the Water Code is amended to read:

36952. The notice required by Section 36951 shall be published in the county in which the property is located in the manner prescribed in Section 6063 of the Government Code, commencing not less than 21 days nor more than 28 days prior to the date required to be stated in the notice by subdivision (e) of Section 36951.

SEC. 3. Section 37155 of the Water Code is amended to read:

37155. If the property sold for delinquent assessments has not been redeemed and three years have elapsed from the date of its sale to the district, the collector, upon demand made by resolution of the board and after giving the notice required by Section 37155.1, shall deliver a collector's deed to the property to the district. The right of redemption shall terminate upon recording of the collector's deed to the property by the district.

SEC. 4. Section 37155.1 is added to the Water Code, to read:

37155.1. After receiving a demand for a collector's deed pursuant to Section 37155, and not less than 45 days nor more than 60 days before delivery of a collector's deed pursuant to that demand, the collector shall publish in the manner prescribed in Section 6063 of the Government Code a notice which shall contain all of the following:

(a) The date of the notice.

(b) A statement that as of a stated date, three years or more will have elapsed since the property or properties described in the notice were sold to the district pursuant to Chapter 4 (commencing with Section 36950).

(c) A statement that on the stated date, the board, by resolution, demanded delivery of a collector's deed to the property to the district.

(d) A statement that unless sooner redeemed, or, if the district has provided for installment redemption, an installment plan of redemption is initiated, a collector's deed to the property will be delivered to the district.

(e) The date and time at which the collector's deed will be executed and delivered.

(f) A statement that if the collector's deed is executed and delivered the right of redemption will terminate.

(g) The name, address, and telephone number of the official who will furnish all information concerning redemption.

(h) The fiscal year or years for which the delinquent assessments were levied.

(i) A description of the property.

(j) The amount required to redeem, which shall include the amounts specified in Section 37155.2.

(k) The name of the assessee on the current assessment book of the district.

(*l*) The street address of the property, if available.

SEC. 5. Section 37155.2 is added to the Water Code, to read:

37155.2. After the first publication of the notice required by Section 37155.1, and not less than 45 days, nor more than 60 days, before the date specified in that notice for the delivery of a collector's deed, the collector shall send by certified mail to each of the parties of interest, as specified in this section, at his or her last known address a copy of the notice published pursuant to Section 37155.1. The collector shall make a reasonable effort to ascertain the names and addresses of each of the parties of interest, including, but not limited to, the securing of a lot book guarantee from a title insurer authorized to conduct business as such in this state with respect to the delinquent property, dated as of the date of the board's demand resolution; an examination of the county's assessments of the delinquent property on the rolls beginning with the year of delinquency to and including that of the last equalized roll; an examination of the most recent telephone books in the county in which the delinquent property is located; and an examination of the telephone books covering the area of the last known address of each party of interest.

For the purposes of this section, a "party of interest" is the holder of any interest in the delinquent property which would be terminated by execution and delivery of a collector's deed.

SEC. 6. Section 37155.3 is added to the Water Code, to read:

37155.3. Upon first publication of the notice required by Section 37155.1, there shall be added to the amount to redeem as provided in Section 37150 the sum of the following:

(a) The cost of publication of the notice required by Section 37155.1.

(b) The cost of securing the lot book guarantee required by Section 37155.2.

SEC. 7. Whenever a collector's deed has been delivered to the

district pursuant to Chapter 6 (commencing with Section 37150) of Part 7 of Division 13 of the Water Code prior to the operative date of this act and the property affected by that collector's deed has not been sold and conveyed by the district by that date, that collector's deed shall be canceled on that operative date. Any property affected by a canceled collector's deed shall simultaneously become subject to redemption until a new collector's deed has been executed and delivered to the district pursuant to the procedures prescribed in this act.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

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 avoid jeopardizing the receipt of delinquent assessments and to provide for the effective administration of the laws relating to delinquent property at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 561

An act to amend Section 115 of the Health and Safety Code, relating to health.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 115 of the Health and Safety Code is amended to read:

115. (a) The fees or charges required to accompany an application for the issuance or renewal of any license pursuant to Sections 1403, 1575.9, and 1729 shall be adjusted annually, commencing July 1, 1988, by the percentage change printed in the Budget Act and determined by dividing the General Fund appropriation to the Licensing and Certification Division in the current state fiscal year by the General Fund appropriation to the Licensing and Certification Division in the preceding state fiscal year. Commencing July 1, 1988, the fees or charges subject to adjustment pursuant to this subdivision shall be the fees or charges which would have been payable in the prior calendar year without regard to the provisions of subdivision (b).

(b) The fees or charges required to accompany an application for

the issuance or renewal of any license pursuant to Section 1729 shall also be adjusted annually, commencing July 1, 1988, by a percentage determined by dividing the total amount of federal funds available for home health agencies during the federal fiscal year ending on September 30 of the year immediately preceding the effective date of the change in fees, less federal funds available for home health agencies for the federal fiscal year which began on October 1 of the year immediately preceding the effective date of the change in fees, by the total estimated revenue derived pursuant to Section 1729 for the fiscal year beginning July 1 of the year immediately preceding the effective date of the change in fees.

(c) The department shall by July 1 of each year 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.

CHAPTER 562

An act to amend Sections 20009.1, 20461.5, 20567.3, and 20567.8 of, to repeal Sections 20567.2, 20567.5, and 20567.6 of, and to repeal and add Section 20567.1 of, the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 20009.1 of the Government Code is amended to read:

20009.1. "Public agency" also includes the following:

(a) The Commandant, Veterans Home of California, with respect to employees of the post exchange and other post fund activities whose compensation is paid from the post fund of the Veterans Home of California.

(b) Any foundation or trust established for the purpose of providing essential activities related to, but not normally included as a part of, the regular instructional program of the California State University or community college.

(c) Any student body or nonprofit organization composed exclusively of students of the California State University or community college or of members of the faculty of the California State University or community college, or both, and established for the purpose of providing essential activities related to, but not normally included as a part of, the regular instructional program of the California State University or community college.

(d) The Adjutant General with respect to persons employed by him or her pursuant to federal regulations and compensated directly from federal funds.

(e) A state organization of governing boards of school districts, the primary purpose of which is the advancing of public education through research and investigation.

(f) Any nonprofit corporation whose membership is confined to public agencies as defined in Section 20009.

(g) A section of the California Interscholastic Federation.

(h) Any credit union incorporated under Division 5 (commencing with Section 14000) of the Financial Code, or incorporated pursuant to federal law, with 95 percent of its membership limited to employees who are members of or retired members of the Public Employees' Retirement System or the State Teachers' Retirement System, and their immediate families, and employees of any such credit union. For the purposes of this subdivision, "immediate family" means those persons related by blood or marriage who reside in the household of a member of the credit union who is a member of or retired member of the Public Employees' Retirement System or the State Teachers' Retirement System. The credit union shall pay any costs that are in addition to the normal charges required to enter into a contract with the board. All such payments made by the credit union which are in addition to the normal charges required shall be added to the total amount appropriated by the Budget Act for the administrative expense of the system. For purposes of this subdivision, a credit union shall not be deemed to be a public agency unless it has entered into a contract with the board pursuant to Chapter 4 (commencing with Section 20450) of this part prior to January 1, 1988. After January 1, 1988, the board shall not enter into a contract with any credit union as a public agency.

(i) Any county superintendent of schools which was a contracting agency on July 1, 1983, and any school district or community college district which was a contracting agency with respect to local policemen, as defined in Section 20020.8, on July 1, 1983.

SEC. 2. Section 20461.5 of the Government Code is amended to read:

20461.5. Whenever by any provision of law an election is given to contracting agencies to subject themselves and their employees to provisions of this part otherwise not applicable to contracting agencies and their employees, and no other means of making the election is expressly provided, any contracting agency may make the election by amendment to its contract with the board approved in the manner provided for the approval of the contracts including an election among the employees affected unless the amendment only adds benefits without affecting members' contributions, in which case the election among the employees is not required. The amendment shall specify the date upon which the agency and its employees shall become subject to the provisions which date shall

not be earlier than the first day following the approval of the contract pursuant to Section 20460, except that if the rate of the employer's contributions changes, the effective date shall not be earlier than the first day of the pay period following the approval. Any such election so made by amendment to the contract shall be irrevocable until the contract is terminated. However, benefits provided by the amendment may be increased or improved from time to time by further amendment to the contract. From and after the date specified in the amendment to the contract the provisions, as they are in effect at the time of election and as they may be amended in the future, shall apply to the contracting agency and to its employees, and the rights, privileges, duties, liabilities, and responsibilities of the contracting agency and of each of its employees included in this system shall be governed thereby.

SEC. 3. Section 20567.1 of the Government Code is repealed.

SEC. 4. Section 20567.1 is added to the Government Code, to read:

20567.1. When a contracting agency is succeeded by another agency, whether or not the former agency ceases to exist, or when the functions of a contracting agency are assumed by a succeeding agency, the succeeding agency, may, if it is not already a contracting agency, become a contracting agency of the Public Employees' Retirement System. If a succeeding agency is or becomes a contracting agency, the contract of the former agency shall be merged into the contract of the succeeding agency.

Whenever there is a merger of contracts pursuant to this section, whether in whole or in part, the assumed contracts, or portions thereof, of the former agency's contract shall cease to exist and the contract of the succeeding agency shall be deemed a continuation of the prior agency's contract. However, any changes in contract terms in the succeeding agency's contract with respect to employees of the former agency shall be considered as a new contract with respect to those provisions.

Accumulated contributions held for or made by the former agency and its employees, and assets derived from those contributions, shall be merged with analogous contributions under the contract of the succeeding agency. Credit for prior and current service to members under the former agency's contract, which accrued while they were eligible for membership, shall not be reduced by the merger. Employees of a noncontracting public agency included in the succeeding agency contract shall become members in the manner applicable to employees of other contracting agencies and shall receive credit for service accordingly.

The liabililty to the Public Employees' Retirement System with respect to service credited under the former agency's contact shall become a contractual liability of the succeeding agency. The former and succeeding agencies may agree to apportion and adjust between them any payments with respect to service credit liability. However, no agreement shall operate to defeat the liability of the succeeding

agency with respect to that service.

SEC. 5. Section 20567.2 of the Government Code is repealed.

SEC. 6. Section 20567.3 of the Government Code is amended to read:

20567.3. When a school district ceases to exist and is succeeded by, or the territory thereof is attached to, another school district which is a contracting agency, the contract under which the contracting agency participates in the system shall be considered, with respect to the former district and its employees, a continuation of the contract under which the former district participated, with such changes as the succeeding contract contains. The board shall determine the amount of accumulated contributions held under the contract of the county superintendent of schools which had been made by the former district, and the contributions shall be transferred to the credit of the contract under which the succeeding district participates.

Nothing in this section or Section 20567.1 shall authorize a school district, the formation of which becomes effective for all purposes after October 1, 1961, to participate in the system except as provided in Chapter 4.5 (commencing with Section 20580) of this part.

SEC. 7. Section 20567.5 of the Government Code is repealed.

SEC. 8. Section 20567.6 of the Government Code is repealed.

SEC. 9. Section 20567.8 of the Government Code is amended to read:

20567.8. Notwithstanding any provision of this article, when all or a portion of one agency's contract is merged into that of another, the retirement allowances may be computed separately for service under the former contract and service under the succeeding contract. In these cases, a transferred member shall be subject to the terms and conditions of the succeeding agency's contract as the member was a new employee of the succeeding agency at the time of transfer.

Furthermore, when all or a portion of one agency's contract is merged into that of another, and when eligibility for membership is different between the two contracts, the differences shall not create prior service liabilities as against either agency, and transferred members shall not be entitled under either contract to credit for service rendered when they were not eligible for membership.

CHAPTER 563

An act to amend Section 27900 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987]

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

SECTION 1. Section 27900 of the Vehicle Code is amended to read:

27900. (a) Every motor vehicle or combination of vehicles used to carry the property of others for hire or used to carry passengers for hire, and any truck or truck tractor having three or more axles or any truck tractor with a semitrailer, shall have displayed on both sides of each vehicle or one of the vehicles in each combination of vehicles the name or trademark of the person under whose authority the vehicle or combination of vehicles is being operated or the name of the lessor or lessee thereof.

(b) All names, trademarks, and other identifiers for companies no longer in business, no longer operating with the same name, or no longer operating under the same operating authority, shall be removed from or covered over on every motor vehicle or combination of vehicles used to carry the property of others for hire or used to carry passengers for hire, and any truck or truck tractor having three or more axles or any truck tractor with a semitrailer, within 60 days from the change of company ownership or operation, and shall be remarked pursuant to subdivision (a) before those vehicles may be operated on the highways.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 564

An act to amend Sections 17403, 17405, 17414, 17416, and 17423 of the Financial Code, relating to escrow agents.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 17403 of the Financial Code is amended to

read:

17403. (a) No person subject to this division shall issue, circulate, or publish any advertisement by any means of communication, or make use of or circulate any letterheads, billheads, blank notes, blank receipts, blank escrow instructions, certificates, circulars, or any written, printed, partially written or printed paper containing any fictitious or corporate name or other words indicating that the person is in the escrow business, unless the person is a licensed escrow agent.

(b) If, in the opinion of the commissioner, any person has violated this section, the commissioner may order that person to desist and refrain from that violation. If, within 30 days after the order is served, a request for hearing is filed in writing and the hearing is not held within 60 days thereafter, the order is rescinded.

SEC. 2. Section 17405 of the Financial Code is amended to read:

17405. The business, accounts and records of every person performing as an escrow agent, whether required to be licensed under this division or not, are subject to inspection and examination by the commissioner at any time without prior notice. The provisions of this section shall not apply to persons specified in Section 17006.

Any person subject to this division shall, upon request, exhibit and allow inspection and copying of any books and records by the commissioner or his or her authorized representative.

SEC. 3. Section 17414 of the Financial Code is amended to read:

17414. It is a violation for any person subject to this division or any director, stockholder, trustee, officer, agent, or employee of any such person to do any of the following:

(a) Knowingly or recklessly disburse or cause the disbursal of escrow funds otherwise than in accordance with escrow instructions, or knowingly or recklessly to direct, participate in, or aid or abet in a material way, any activity which constitutes theft or fraud in connection with any escrow transaction.

(b) Knowingly or recklessly make or cause to be made any misstatement or omission to state a material fact, orally or in writing, in escrow books, accounts, files, reports, exhibits, statements, or any other document pertaining to an escrow or escrow affairs.

SEC. 4. Section 17416 of the Financial Code is amended to read:

17416. Whenever in the opinion of the commissioner any person, except as named in Section 17006, is engaged, either actually or through subterfuge, in the business of receiving escrows for deposit or delivery as defined in this division, without a license from the commissioner the commissioner may order that person to desist and to refrain from engaging in that business. If, within 30 days after such an order is served, a request for a hearing is filed in writing and the hearing is not held within 60 days thereafter, the order is rescinded.

SEC. 5. Section 17423 of the Financial Code is amended to read:

17423. (a) The commissioner may, after appropriate notice and opportunity for hearing, by order, censure or suspend for a period not exceeding 12 months, or bar from any position of employment,

management, or control any escrow agent, or any other person, if the commissioner finds either of the following:

(1) That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the escrow agent or to the public.

(2) That the person has been convicted of, or pleaded nolo contendere to, a crime, or has been held liable in a civil action by final judgment, if the crime or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property.

(b) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from disbursing any trust funds in the escrow agent's possession, custody or control, and the financial institution holding trust funds shall be so notified by service of the notice, accusation and other administrative pleadings. The prohibition against disbursement of trust funds may be set aside, in whole or in part, by the commissioner for good cause.

CHAPTER 565

An act to amend Sections 41605.5 and 42314.5 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 11, 1987]

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

SECTION 1. Section 41605.5 of the Health and Safety Code is amended to read:

41605.5. (a) In considering the offset requirement for a project facility which utilizes agricultural waste products, forest waste products, or similar organic wastes as biomass fuel in a steam generator (boiler), to produce electrical energy, or to be used as a digester feedstock in a cogeneration facility, the district shall include the incremental emissions benefit that occurs because those wastes are not disposed of by open field burning or by forest land burning if the biomass fuel would ordinarily or otherwise be burned in that manner in the same air basin. The emissions credit shall be offset at a ratio of 1.2 to 1 for nonattainment pollutants if within 15 miles, and at a ratio of 2 to 1 if further than 15 miles within the same air basin.

(b) The districts and the state board, in cooperation, shall develop and, on or before July 1, 1988, and at least once every two years thereafter, reevaluate a procedure to determine the availability and

magnitude of the offsets resulting from the incremental emissions benefits, including an accounting of the quantity of biomass material credits calculated for purposes of Section 42314.5 as necessary to ensure that state and federal ambient air quality standards may be achieved and maintained, or that reasonable further progress be made toward attainment.

(c) The applicant shall provide the state board or a district, as the case may be, the information not publicly available from state or local agencies which is necessary to make the determinations required by this section. The information shall include, but is not limited to, the following:

(1) The quality of fuel or waste to be burned or used in the facility.

(2) The type of fuel or waste to be burned or used in the facility.

(3) The source of the fuel or waste to be burned or used in the facility.

SEC. 2. Section 42314.5 of the Health and Safety Code is amended to read:

42314.5. In considering a permit for a facility which utilizes agricultural waste products, forest waste products, or similar organic wastes as biomass fuel in a steam generator (boiler) to produce electrical energy, or to be used as a digester feedstock in a cogeneration facility, the district shall allow offset credits as provided in Sections 41604 and 41605.5.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 566

An act to amend Sections 73770, 73772, and 73773 of the Government Code, relating to courts.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 11, 1987]

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

SECTION 1. Section 73770 of the Government Code is amended to read:

73770. This article applies to the municipal court established in a district designated as the Judicial District of Marin County.

SEC. 2. Section 73772 of the Government Code is amended to read:

73772. There shall be one clerk, who shall be the administrative officer of the court and who shall receive an annual salary recommended by the municipal court and approved by the board of

supervisors.

Any change in the salaries in effect immediately prior to January 1, 1987, shall be on an interim basis and shall expire on January 1 of the second calendar year after the calendar year in which the change occurs, unless ratified by the Legislature.

SEC. 3. Section 73773 of the Government Code is amended to read:

73773. (a) The clerk, with the approval of the judges of the court, may appoint the following employees:

(1) One assistant clerk administrative officer.
(2) One administrative services assistant II.
(3) Five supervising legal clerks.
(4) One calendar clerk.
(5) Nine courtroom clerks.
(6) Two senior legal clerks.
(7) Thirteen legal clerks III.
(8) Thirteen legal clerks II.
(9) Six deputy clerks I (to be converted to legal clerk I).
(10) Eight legal clerks I.
(11) One senior secretary.
(12) One senior account assistant.
(13) One account assistant.
(14) One CRT/input operator.
(15) Two intermediate clerks.
(16) One intermediate typist.
(17) Such other employees as the board of supervisors approve upon the recommendation of the municipal court, each of which shall receive a salary recommended by the municipal court and approved by the board of supervisors.

Any appointee shall be compensated at the first step and advanced to each higher step upon completion of the probationary period and each successive 12 months of service thereafter. Upon the recommendation of the municipal court and approval of the board of supervisors, such employees may be employed at, or may be granted, a special step increase to any step within the salary range on the basis of experience and qualifications.

(b) Any change in the salaries in effect immediately prior to January 1, 1987, shall be on an interim basis and shall expire on January 1 of the second calendar year after the calendar year in which the change occurs, unless ratified by the Legislature.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 567

An act to amend Section 1797.202 of the Health and Safety Code, relating to health.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 1797.202 of the Health and Safety Code is amended to read:

1797.202. (a) Every local EMS agency shall have a full- or part-time licensed physician and surgeon as medical director, as designated by the county or by the joint powers agreement, to provide medical control and to assure medical accountability throughout the planning, implementation and evaluation of the EMS system.

(b) The medical director of the local EMS agency may appoint one or more physicians and surgeons as assistant medical directors to assist the medical director with the discharge of the duties of medical director or to assume those duties during any time that the medical director is unable to carry out those duties as the medical director deems necessary.

(c) The medical director may assign to administrative staff of the local EMS agency for completion under the supervision of the medical director, any administrative functions of his or her duties which do not require his or her professional judgment as medical director.

CHAPTER 568

An act to repeal Section 8820.1 of, and to add Section 8820.5 to, the Elections Code, relating to county central committees.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 8820.1 of the Elections Code is repealed.

SEC. 2. Section 8820.5 is added to the Elections Code, to read:

8820.5. Notwithstanding any other provision of law, in a county of the fifth class as defined in Section 28026 of the Government Code, the elected members of the county central committee shall be elected by Assembly districts and shall consist of six members elected from each Assembly district, whether wholly or partly within the county, provided each such member is a resident of the county and

of the Assembly district which the member represents. Only a person who is a resident of the county may vote for a candidate for membership to the county central committee and may vote only for candidates seeking to represent the Assembly district in which the voter resides.

CHAPTER 569

An act relating to aeronautics, and making an appropriation therefor.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 11, 1987]

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

SECTION 1. The sum of eight thousand four hundred sixty-six dollars ($8,466) is hereby appropriated from the Aeronautics Account in the State Transportation Fund to the Director of Transportation for allocation for purposes of Article 4 (commencing with Section 21680) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code, as follows:

(a) To the operator of Thermal Airport, three thousand seven hundred sixteen dollars ($3,716).

(b) To the operator of Chiriaco Summit Airport, three thousand six hundred eighty-nine dollars ($3,689).

(c) To the operator of Desert Center Airport, one thousand sixty-one dollars ($1,061).

SEC. 2. The Legislature finds and declares that special facts and circumstances, not generally applicable, exist with respect to the Thermal Airport, the Chiriaco Summit Airport, and the Desert Center Airport, all located in the County of Riverside. The operators of these airports were required to refund to the state a portion of certain allocations from the Aeronautics Account in the State Transportation Fund for airport and aviation purposes due to a technicality in the accrual of these funds for those purposes. The Legislature further finds and declares that the return of these funds to the airport operators and the authorization of their expenditure for their original purposes cannot be accomplished by a general law and that a special statute within the meaning of Section 16 of Article IV of the California Constitution applicable only to these three airports is therefore necessary.

CHAPTER 570

An act to add Section 14005.3 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 14005.3 is added to the Welfare and Institutions Code, to read:

14005.3. A woman is eligible, to the extent required by federal law, as though she were pregnant, for all pregnancy-related and postpartum services for a 60-day period beginning on the last day of pregnancy.

For purposes of this section, "postpartum services" means those services provided after childbirth, child delivery, or miscarriage.

CHAPTER 571

An act to amend Sections 5610, 5610.6, and 5610.7 of, to repeal and add Section 5610.2 of, and to repeal Section 5610.1 of, the Business and Professions Code, and to amend Section 13401 of the Corporations Code, relating to corporations.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 5610 of the Business and Professions Code is amended to read:

5610. An architectural 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 licensed architects, are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, and all other statutes and regulations pertaining to the corporation and the conduct of its affairs. With respect to an architectural corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the California State Board of Architectural Examiners.

SEC. 2. Section 5610.1 of the Business and Professions Code is repealed.

SEC. 3. Section 5610.2 of the Business and Professions Code is repealed.

SEC. 4. Section 5610.2 is added to the Business and Professions Code, to read:

5610.2. It is unprofessional conduct and a violation of this chapter, punishable as specified in Section 5560, 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, the Moscone-Knox Professional Corporation Act, this article, or any regulation adopted pursuant to those provisions.

SEC. 5. Section 5610.6 of the Business and Professions Code is amended to read:

5610.6. An architectural 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, rule, or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by those statutes, rules, and regulations to the same extent as a person holding a license under Section 5551.

SEC. 6. Section 5610.7 of the Business and Professions Code is amended to read:

5610.7. The board shall formulate and enforce rules and regulations to carry out the purposes and objectives of this article, including rules and regulations requiring (a) that the articles of incorporation or bylaws of an architectural corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person (as defined in the Moscone-Knox Professional Corporation Act), or a deceased person, shall be sold to the corporation or to the remaining shareholders of the corporation within the time as those rules and regulations may provide, and (b) that an architectural corporation shall provide adequate security by insurance or otherwise for claims against it by its clients arising out of the rendering of professional services.

SEC. 7. Section 13401 of the Corporations Code is amended to read:

13401. As used in this part:

(a) "Professional services" means any type of professional services which may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code or the Chiropractic Act.

(b) "Professional corporation" means a corporation organized under the General Corporation Law which is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and which in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation rendering professional services by persons duly licensed by the Board of Medical Quality Assurance or any examining committee under the jurisdiction of the

board, the State Board of Pharmacy, the Board of Examiners in Veterinary Medicine, or the State Board of Architectural Examiners shall not be required to obtain a certificate of registration in order to render those professional services.

(c) "Licensed person" means any natural person who is duly licensed under the provisions of the Business and Professions Code or the Chiropractic Act to render the same professional services as are or will be rendered by the professional corporation of which he or she is or intends to become, an officer, director, shareholder, or employee.

(d) "Disqualified person" means a licensed person who for any reason becomes legally disqualified (temporarily or permanently) to render the professional services which the particular professional corporation of which he or she is an officer, director, shareholder, or employee is or was rendering.

CHAPTER 572

An act to amend Section 22658 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 22658 of the Vehicle Code is amended to read:

22658. (a) Except as provided in Section 22658.2, the owner or person in lawful possession of any private property may, subsequent to notifying, by telephone or, if impractical, by the most expeditious means available, the city police or county sheriff, whichever is appropriate, cause the removal of a vehicle parked on the property to the nearest public garage if (1) there is displayed, in plain view at all entrances to the property, a sign not less than 17 by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law enforcement agency, and the sign may also indicate that a citation may also be issued for the violation, or (2) the lot or parcel upon which the vehicle is parked is improved with a single-family dwelling.

(b) The person causing removal of the vehicle shall, if the person knows or is able to ascertain from the registration records of the Department of Motor Vehicles the name and address of the registered and legal owner of the vehicle, immediately give, or cause to be given, notice in writing to the registered and legal owner of the fact of the removal, the grounds for the removal, and indicate the

place to which the vehicle has been removed. If the vehicle is stored in a public garage, a copy of the notice shall be given to the proprietor of the garage. The notice provided for in this section shall include the amount of mileage on the vehicle at the time of removal. If the person does not know and is not able to ascertain the name of the owner or for any other reason is unable to give the notice to the owner as provided in this section, the person causing removal of the vehicle shall comply with the requirements of subdivision (c) of Section 22853 relating to notice in the same manner as applicable to an officer removing a vehicle from private property.

(c) This section does not limit or affect any right or remedy which the owner or person in lawful possession of private property may have by virtue of other provisions of law authorizing the removal of a vehicle parked upon private property.

(d) The owner of a vehicle removed from private property pursuant to subdivision (a) may recover for any damage to the vehicle resulting from any intentional or negligent act of any person causing the removal of, or removing, the vehicle.

(e) Any owner or person in lawful possession of any private property, or an "association" pursuant to Section 22658.2, causing the removal of a vehicle parked on that property is liable for double the storage or towing charges whenever there has been a failure to post a sign as required by subdivision (a) or to state the grounds for the removal of the vehicle if requested by the legal or registered owner of the vehicle as required by subdivision (f).

(f) Any owner or person in lawful possession of any private property, or an "association" pursuant to Section 22658.2, causing the removal of a vehicle parked on that property shall state the grounds for the removal of the vehicle if requested by the legal or registered owner of that vehicle. Any towing company that removes a vehicle from private property with the authorization of the property owner or the property owner's agent shall not be held responsible in any situation relating to the validity of the removal. Any towing company that removes the vehicle under this section shall be responsible for (1) any damage to the vehicle in the transit and subsequent storage of the vehicle and (2) the removal of a vehicle other than the vehicle specified by the owner or other person in lawful possession of the private property.

(g) Possession of any vehicle under this section shall be deemed to arise when a vehicle is removed from private property and is in transit.

(h) A towing company may impose a charge of not more than one-half of the regular towing charge for the towing of a vehicle at the request of the owner of private property or that owner's agent pursuant to this section if the owner of the vehicle or the owner's agent returns to the vehicle before it is removed from the private property. The regular towing charge may only be imposed after the vehicle has been removed from the property and is in transit.

(i) A charge for towing or storage, or both, of a vehicle under this

section is excessive if the charge is greater than that which would have been charged for towing or storage, or both, made at the request of a law enforcement agency under an agreement between the law enforcement agency and a towing company in the city or county in which is located the private property from which the vehicle was, or was attempted to be, removed.

If a request to release a vehicle is made within eight hours from the time the vehicle is brought into the storage facility, regardless of the calendar date, the storage charge shall be for only one day. Not more than one day's storage charge may be required for any vehicle released the same day that it is stored.

(j) Any person who charges a vehicle owner a towing, service, or storage charge at an excessive rate, as described in subdivision (i), is liable to the vehicle owner for four times the amount charged.

(k) Persons operating or in charge of any storage facility where vehicles are stored pursuant to this section shall accept a valid bank credit card or cash for payment of towing and storage by a registered owner or the owner's agent claiming the vehicle. In addition, persons operating or in charge of the storage facility shall have sufficient moneys on the premises to accommodate, and make change in, a reasonable monetary transaction.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 573

An act to add Section 14613.4 to the Government Code, relating to the California State Police.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 11, 1987.]

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

SECTION 1. Section 14613.4 is added to the Government Code, to read:

14613.4. Every state police officer of the California State Police Division, prior to the date he or she is first deputized by the appointing power, shall have satisfactorily completed the basic course as set forth in the Commission on Peace Officer Standards and Training.

CHAPTER 574

An act to add Chapter 15 (commencing with Section 11400) of Part 7 of the Education Code, relating to education.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Chapter 15 (commencing with Section 11400) is added to Part 7 of the Education Code, to read:

CHAPTER 15. BLUE RIBBON BIOTECHNOLOGY CURRICULUM ADVISORY COMMITTEE

11400. (a) The Legislature finds and declares as follows:

(1) The State of California is leading the nation in the creation and development of the biotechnology industry, which experts predict will be the leading growth industry for the next quarter century.

(2) Recent advances in biotechnology are revolutionizing approaches to fundamental biological problems, opening new scientific vistas, and generating new products and industrial processes in pharmaceuticals, medicine, plant and animal agriculture, specialty chemicals, and environmental protection.

(3) In order to provide the scientific and technical manpower needed to sustain and advance California's lead in biotechnology, and to create an environment conducive to the growth of the industry within the state, it is essential that public high schools introduce pupils to the basic science that underlies molecular biology and the biotechnology industry.

(4) The existing biology curriculum in California's high schools is in great need of modernization and does not adequately emphasize the scientific concepts and techniques that underlie the emerging biology-based industries.

(5) The public high school science curriculum will be reviewed by the State Department of Education during the period from 1987 to 1990, inclusive, and revised science curriculum frameworks will be the product of the review.

(b) It is the intent of the Legislature to foster the development and dissemination of a science curriculum component that will provide high school pupils with awareness and understanding of the scientific concepts and techniques that form the basis of the biotechnology industry. It is also the intent of the Legislature that California's youth become aware of the tremendous potential of this new industry, including the economic and social costs and benefits that accompany new technology. Finally, it is the intent of the Legislature that the State Department of Education and the State Board of Education incorporate the concepts and techniques of

modern biology in the forthcoming science curriculum frameworks.

(c) It is the intent of the Legislature to establish a Blue Ribbon Biotechnology Curriculum Advisory Committee to advise the Superintendent of Public Instruction on the appropriateness of, feasibility of, and procedures and resources necessary to develop a high school biology curriculum component that emphasizes the basic concepts of genetics and biochemistry underlying molecular biology, explores the techniques of biotechnology, and studies the economic and social issues attending the introduction of new technologies.

11402. The Superintendent of Public Instruction shall establish a Blue Ribbon Biotechnology Curriculum Advisory Committee to advise the State Department of Education pursuant to this section.

(a) The Blue Ribbon Biotechnology Curriculum Committee shall be comprised of at least 10 members representing colleges and universities, firms in the biotechnology industry, school districts, county offices of education, biology teachers, and science administrators.

(b) On or before May 1, 1988, the committee shall report to the superintendent its findings and recommendations regarding the following:

(1) Whether the State Department of Education and State Board of Education should incorporate a high school biology curriculum component as described in subdivision (c) of Section 11400 in the forthcoming science curriculum frameworks.

(2) If the recommendation made pursuant to paragraph (1) is positive, the procedures and resources that are necessary to accomplish that purpose, including the following:

(A) A plan for the development of a high school biology curriculum component that emphasizes the basic concepts of genetics and biochemistry underlying molecular biology, explores the techniques of biotechnology, and studies the economic and social issues attending the introduction of new technologies. In developing this plan, the committee shall address the scope of the curriculum and make recommendations concerning appropriate content, instructional methods, materials, and equipment.

(B) A plan to implement the developed curriculum in a demonstration project in a broadly representative sample of high schools reflecting the geographical, ethnic, and economic diversity of the state.

(C) A plan to evaluate the effectiveness of the developed curriculum.

(D) A plan to train teachers to incorporate the developed curriculum effectively into their classroom instruction.

(E) A plan to monitor and update the developed curriculum on a timely and regular basis.

(c) The State Department of Education shall provide staff for the committee.

(d) The superintendent shall submit the recommendations of the Blue Ribbon Biotechnology Curriculum Advisory Committee to the Legislature on or before August 1, 1988.

CHAPTER 575

An act to add Section 2053 to the Penal Code, relating to prisoners.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. This act shall be known and may be cited as "The Prisoner Literacy Act."

SEC. 2. Section 2053 is added to the Penal Code, to read:

2053. (a) The Legislature finds and declares that there is a correlation between prisoners who are functionally literate and those who successfully reintegrate into society upon release. It is therefore the intent of the Legislature, in enacting "The Prisoner Literacy Act," to raise the percentage of prisoners who are functionally literate, in order to provide for a corresponding reduction in the recidivism rate.

(b) The Department of Corrections shall determine the reading level of each prisoner upon commitment. The department shall report to the Legislature on or before July 1, 1988, regarding the reading levels of prisoners, the number of prisoners who are enrolled in reading programs, the recidivism rates of prisoners based upon their reading levels, the department's estimate of the amount of time it would take an average inmate to achieve a 9th grade reading level, the costs involved in implementing reading programs on a systemwide basis, the department's estimate on the amount of time necessary to establish a systemwide reading program, and any barriers which currently exist to the implementation of a systemwide reading program.

CHAPTER 576

An act to amend Section 21051 of, and to add Sections 21200.6 and 21200.8 to, the Financial Code, relating to pawnbrokers.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 21051 of the Financial Code is amended to read:

21051. (a) The limitations with respect to rates and charges set

forth in Sections 21200 and 21200.5 do not apply to any loan of a bona fide principal amount of two thousand five hundred dollars ($2,500) or more if this section is not used for the purpose of evading this division.

(b) In determining whether a loan is a loan of the principal amount of two thousand five hundred dollars ($2,500), Section 22054 shall apply.

SEC. 2. Section 21200.6 is added to the Financial Code, to read:

21200.6. (a) In addition to other allowed charges, a pawnbroker may collect a handling and storage charge for each article pawned. Irrespective of the duration of time that an article is held in pledge, the maximum amount that may be charged pursuant to this section is in accordance with the following schedule:

(1) Three dollars ($3) for any article that cannot be contained within one cubic foot.

(2) Nine dollars ($9) for any article that cannot be contained within three cubic feet.

(3) Eighteen dollars ($18) for any article that cannot be contained within six cubic feet.

(b) No additional charge is allowed for any article that can be contained within one cubic foot.

(c) For purposes of this section, cubic feet shall be determined by multiplying the width of an article, at its greatest width, by the depth of an article, at its greatest depth, by the height of an article, at its greatest height.

SEC. 3. Section 21200.8 is added to the Financial Code, to read:

21200.8. In addition to other allowed charges, a pawnbroker may collect a processing charge of four dollars ($4) for each firearm pawned.

CHAPTER 577

An act to amend Section 1382 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 1382 of the Penal Code is amended to read:

1382. The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases:

(a) When a person has been held to answer for a public offense and an information is not filed against that person within 15 days thereafter.

(b) When a defendant is not brought to trial in a superior court within 60 days after the finding of the indictment or filing of the

information or, in case the cause is to be tried again following a mistrial, an order granting a new trial from which an appeal is not taken, or an appeal from the superior court, within 60 days after the mistrial has been declared, after entry of the order granting the new trial, or after the filing of the remittitur in the trial court, or after the issuance of a writ or order which in effect grants a new trial, within 60 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney, or within 90 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney in any case where the district attorney chooses to resubmit the case for a preliminary examination after an appeal or the issuance of a writ reversing a judgment of conviction upon a plea of guilty prior to a preliminary hearing in a municipal or justice court; except that an action shall not be dismissed under this subdivision if it is set for trial on a date beyond the 60-day period at the request of the defendant or with the defendant's consent, express or implied, or because of the defendant's neglect or failure to appear and if the defendant is brought to trial on the date so set for trial or within 10 days thereafter. Whenever a case is set for trial beyond the 60-day period at the request of the defendant, and the defendant fails to appear on the date set for trial and a bench warrant is issued, the defendant shall be brought to trial within 60 days after the defendant next appears in the superior court. Whenever a case is set for trial beyond the 60-day period at the request of the defendant, the court may not grant a motion of the defendant to vacate the date set for trial and to set an earlier trial date unless all parties are properly noticed and the court finds good cause for granting that motion.

(c) Regardless of when the complaint is filed, when a defendant in a misdemeanor case in an inferior court is not brought to trial within 30 days after he or she is arraigned or enters his or her plea, whichever occurs later, if the defendant is in custody at the time of arraignment or plea, or in all other cases, within 45 days after the defendant's arraignment or entry of the plea, whichever occurs later, or in case the cause is to be tried again following a mistrial, an order granting a new trial from which an appeal is not taken, or an appeal from the inferior court, within 30 days after the mistrial has been declared, after entry of the order granting the new trial, or after the remittitur is filed in the trial court or, if the new trial is to be held in the superior court, within 30 days after the judgment on appeal becomes final; except that an action shall not be dismissed under this subdivision (1) if it is set for trial on a date beyond the prescribed period at the request of the defendant or with the defendant's consent, express or implied, and the defendant is brought to trial on the date so set for trial or within 10 days thereafter or (2) if it is not tried on the date set for trial because of the defendant's neglect or failure to appear, in which case the defendant shall be deemed to have been arraigned within the meaning of this subdivision on the date of his or her subsequent arraignment on a bench warrant or his or her submission to the court.

(d) If the defendant is not represented by counsel, the defendant shall not be deemed under this section to have consented to the date for the defendant's trial unless the court has explained to the defendant his or her rights under this section and the effect of his or her consent.

CHAPTER 578

An act to amend Section 7 of Chapter 1393 of the Statutes of 1986, relating to prisons, and making an appropriation therefor.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 7 of Chapter 1393 of the Statutes of 1986 is amended to read:

Sec. 7. The Department of Corrections may transfer from any funds available to the department the sum of up to seventy thousand dollars ($70,000) for the following purposes:

(a) For salaries for up to two police officers for up to two years for the City of Ione, an amount not to exceed thirty thousand dollars ($30,000) per year.

(b) For the Amador County Unified School District, an amount not to exceed ten thousand dollars ($10,000).

Pursuant to Section 1 of Chapter 957 of the Statutes of 1983, as amended by Section 7 of Chapter 931 of the Statutes of 1985, the funds transferred under this section shall be used for purposes as necessary to mitigate the negative impact on the community created during the construction of the prison in Amador County.

CHAPTER 579

An act to amend Sections 1090, 35120, and 72425 of the Education Code, relating to education.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 1090 of the Education Code is amended to read:

1090. (a) The board of supervisors may allow, as compensation, to each member of the county board of education a sum not to exceed the following amounts:

(1) In any class one county, each member of the county board of education who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed six hundred dollars ($600) per month.

(2) In any class two county, each member of the county board of education who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed four hundred dollars ($400) per month.

(3) In any class three county, each member of the county board of education who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed three hundred dollars ($300) per month.

(4) In any class four county, each member of the county board of education who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two hundred dollars ($200) per month.

(5) In any class five, class six, class seven, or class eight county, each member of the county board of education who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed one hundred sixty dollars ($160) per month.

(b) Any member who does not attend all meetings held in any month may receive as compensation for his or her services an amount not greater than the maximum amount allowed by subdivision (a) divided by the number of meetings held, and multiplied by the number of meetings actually attended.

(c) The amount of compensation shall be determined by the county board of supervisors, or, in a county having a fiscally independent county board of education, by the county board of education.

(d) A member of a county board of education may be paid for any meeting for which he or she is absent if the board includes within its minutes a finding that at the time of the meeting he or she was performing services outside the meeting on behalf of the board.

(e) A member may be paid in any calendar year for the first two meetings from which he or she is absent if the board by resolution duly adopted and included in its minutes finds that at the time of the meeting from which the member is absent he or she is ill. A member may not receive compensation for any meeting from which he or she is absent in excess of the first two meetings missed, except as specified in subdivision (d).

(f) There may also be allowed to each member who uses a privately owned automobile in the discharge of necessary official duties as a member of the county board of education, the same amount as allowed by any county official in the performance of his or her official duties. The mileage rate allowed in this section shall be based on the total mileage claimed in a calendar month.

(g) For purposes of this section, the classification of counties shall be determined pursuant to Section 1205.

SEC. 2. Section 35120 of the Education Code is amended to read:

35120. (a) (1) In any school district in which the average daily attendance for the 1982–83 school year exceeded 400,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two thousand dollars ($2,000) per month.

(2) In any school district in which the average daily attendance exceeds 60,000 and which is not located in a city and county, or in any school district in which the average daily attendance exceeded 60,000 in the 1982–83 school year or any subsequent school year, and which is not located in a city and county, the governing board may prescribe, as compensation for the services of each member of the board who actually attends all meetings held, a sum not to exceed one thousand five hundred dollars ($1,500) in any month.

(3) In any school district in which the average daily attendance for the 1982–83 school year was less than 60,000, except a district which also comes within the terms of the preceding sentence, but more than 25,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed seven hundred fifty dollars ($750) in any month.

(4) In any school district in which the average daily attendance for the 1982–83 school year was 25,000 or less but more than 10,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed four hundred dollars ($400) in any month.

(5) In any school district in which the average daily attendance for the 1982–83 school year was 10,000 or less but more than 1,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two hundred forty dollars ($240) in any month.

(6) In any school district in which the average daily attendance for the 1982–83 school year was 1,000 or less but more than 150, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed one hundred twenty dollars ($120) in any month.

(7) In any school district in which the average daily attendance for the 1982–83 school year was less than 150, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed sixty dollars ($60) per month.

Any member who does not attend all meetings held in any month may receive, as compensation for his or her services, an amount not greater than the maximum amount allowed by this subdivision divided by the number of meetings held and multiplied by the number of meetings actually attended.

(b) The compensation of members of the governing board of a school district newly organized or reorganized after June 30, 1983, shall be governed by subdivision (a). For this purpose, the total average daily attendance in all of the schools of the district in the school year in which the organization or reorganization became effective pursuant to Section 4062 shall be deemed to be the average daily attendance in the district for the 1982–83 school year.

(c) A member may be paid for any meeting when absent if the board by resolution duly adopted and included in its minutes finds that at the time of the meeting he or she is performing services outside the meeting for the school district or districts.

(d) A member may be paid in any calendar year for the first two meetings from which he or she is absent if the board by resolution duly adopted and included in its minutes finds that at the time of the meeting from which the member is absent he or she is ill. A member may not receive compensation for any meeting from which he or she is absent in excess of the first two meetings missed, except as specified in subdivision (c).

(e) The compensation shall be a charge against the funds of the school district. If the city board of education or the governing board of the district is the governing board of more than one school district, the compensation shall be charged against and paid by the respective school districts in the same proportion as the salary of the city superintendent of schools is charged against them. Compensation shall be reduced by an amount equal to any salary or compensation paid to the members of the city board of education from any funds of the city.

SEC. 3. Section 72425 of the Education Code is amended to read:

72425. (a) In any community college district in which the average daily attendance exceeds 60,000, and which is not located in a city and county, or in any community college district in which the average daily attendance exceeded 60,000 in the 1982–83 school year or any subsequent school year, and which is not located in a city and county, the governing board may prescribe, as compensation for the services of each member of the board who actually attends all meetings held by the board, a sum not to exceed one thousand five hundred dollars ($1,500) in any month. In any community college district in which the average daily attendance for the school year 1982–83 was less than 60,000, except a district which also comes within the terms of the preceding sentence, but more than 25,000, each member of the governing board of the district who actually attends all meetings held by the board, may receive as compensation for his or her services a sum not to exceed seven hundred fifty dollars ($750) in any month. In any community college district in which the average daily attendance for the school year 1982–83 was 25,000 or less but more than 10,000, each member of the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed four hundred dollars ($400) in any month. In any community college

district in which the average daily attendance for the 1982–83 school year was 10,000 or less, but more than 1,000, each member of the governing board of the district who actually attends all meetings held by the board may receive as compensation for his or her services a sum not to exceed two hundred forty dollars ($240) in any month. In any community college district in which the average daily attendance for the 1982–83 school year was 1,000 or less but more than 150, each member of the governing board of the district who actually attends all meetings held by the board may receive as compensation for his or her services a sum not to exceed one hundred twenty dollars ($120) in any month.

Any member of a governing board who does not attend all meetings held by the board in any month may receive, as compensation for his or her services, an amount not greater than a pro rata share of the number of meetings actually attended based upon the maximum compensation authorized by this subdivision.

(b) The compensation of members of the governing board of a community college district newly organized or reorganized after June 30, 1983, shall be governed by subdivision (a). For purposes of the total average daily attendance in all of the community colleges of the district in the school year in which the organization or reorganization became effective pursuant to Section 4062 shall be deemed to be the average daily attendance in the district for the 1982–83 school year.

(c) A member may be paid for any meeting when absent if the board by resolution duly adopted and included in its minutes finds that at the time of the meeting he or she is performing services outside the meeting for the community college district. The compensation shall be a charge against the funds of the district.

(d) A member may be paid in any calendar year for the first two meetings from which he or she is absent if the board by resolution duly adopted and included in its minutes finds that at the time of the meeting from which the member is absent he or she is ill. A member may not receive compensation for any meeting from which he or she is absent in excess of the first two meetings missed, except as specified in subdivision (c).

(e) Notwithstanding any provision of law to the contrary, any member of the governing board of the community college district who also is a member of, and entitled to receive benefits from, any public retirement or pension system administered by the Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System may elect to forego any compensation provided by subdivision (a), (b), or (c) and, if the compensation is foregone, the member shall not have his or her retirement benefits reduced and shall not be required to be reinstated in his or her retirement system.

CHAPTER 580

An act to add Chapter 3.5 (commencing with Section 210.5) to Title 8 of Part 1 of the Penal Code, relating to crime.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Chapter 3.5 (commencing with Section 210.5) is added to Title 8 of Part 1 of the Penal Code, to read:

CHAPTER 3.5. HOSTAGES

210.5. Every person who commits the offense of false imprisonment, as defined in Section 236, against a person for purposes of protection from arrest, which substantially increases the risk of harm to the victim, or for purposes of using the person as a shield is punishable by imprisonment in the state prison for three, five, or eight years.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 581

An act to amend Sections 4669 and 5510 of, and to add Sections 4670 and 5512 to, the Public Utilities Code, relating to insurance.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 4669 of the Public Utilities Code is amended to read:

4669. Any for-hire vessel operator who knowingly refuses or fails to procure protection against liability, as required by Section 4663, is guilty of a misdemeanor.

SEC. 2. Section 4670 is added to the Public Utilities Code, to read:

4670. Following an administrative hearing, the commission may impose a penalty of not more than one thousand dollars ($1,000) upon any for-hire vessel operator who fails to file the evidence of liability protection required by this article.

SEC. 3. Section 5510 of the Public Utilities Code is amended to read:

5510. Any commercial air operator who knowingly refuses or fails to procure protection against liability, as required by Section 5503, is guilty of a misdemeanor.

SEC. 4. Section 5512 is added to the Public Utilities Code, to read:

5512. Following an administrative hearing, the commission may impose a penalty of not exceeding one thousand dollars ($1,000) upon any commercial air operator who fails to file the evidence of liability protection required by this article.

CHAPTER 582

An act to amend Sections 8700 and 8701 of the Business and Professions Code, relating to land surveyors.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 8700 of the Business and Professions Code is amended to read:

8700. This chapter may be cited as the Professional Land Surveyors' Act. Whenever reference is made to the Land Surveyors' Act by any statute, it shall be construed as referring to the Professional Land Surveyors' Act.

SEC. 2. Section 8701 of the Business and Professions Code is amended to read:

8701. "Professional land surveyor" refers to one who practices or offers to practice land surveying. Whenever reference is made to a land surveyor by any statute, it shall be construed as referring to a professional land surveyor.

SEC. 3. It is the intent of the Legislature that the amendments to Sections 8700 and 8701 of the Business and Professions Code, proposed by Sections 1 and 2 of this act, shall not change the scope of practice of registered civil engineers or licensed land surveyors as it existed on the effective date of this act.

CHAPTER 583

An act to add Section 25658.5 to the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 25658.5 is added to the Business and Professions Code, to read:

25658.5. Any person under the age of 21 years who attempts to purchase any alcoholic beverage from a licensee, or the licensee's agent or employee, is guilty of an infraction and shall be punished by a fine of not more than one hundred dollars ($100). A second or subsequent violation of this section shall be punished by a fine of not more than two hundred fifty dollars ($250), or the person shall be required to perform up to 36 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service, as the court deems just.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 584

An act to amend Sections 444.7 and 444.11 of the Health and Safety Code, relating to health.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 444.7 of the Health and Safety Code is amended to read:

444.7. The office shall submit a report to the Legislature on the progress of the pilot program on or before July 1, 1990. The report shall include, but not be limited to, an evaluation of the cost, safety, and quality of care and quality of studies produced by the pilot projects. The report shall also include a recommendation as to whether freestanding cardiac catheterization should be continued, and if so, under what conditions. The report shall include a

comparison of procedures in freestanding cardiac catheterization laboratories with those performed in general acute care hospitals.

SEC. 2. Section 444.11 of the Health and Safety Code is amended to read:

444.11. This part shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1991, deletes or extends that date.

CHAPTER 585

An act to amend Section 13332.08 of the Government Code, relating to state facilities.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 13332.08 of the Government Code is amended to read:

13332.08. (a) No funds shall be used, either directly or by supplementing any other appropriation, to purchase rugs or carpets for any state office except for offices used by elective officers, the President of the University of California, a chancellor of the University of California, the Chancellor of the California State University, a president of a state university or college, department heads, and for other facilities or areas under the control of the agencies financed by the Budget Act in accordance with standards issued by the Director of General Services.

Approval of the Director of General Services shall be obtained prior to procurement and installation of rugs or carpets. The Director of General Services may authorize the use of carpeting in other specialized facilities not meeting the established standards not sooner than 30 days after notification in writing of the proposal with justification therefor to the Joint Legislative Budget Committee.

(b) The Director of General Services shall prepare and submit to the Chairperson of the Joint Legislative Budget Committee, or his or her designee, a cost-benefit analysis of open-office landscape proposals in either existing or new buildings not less than 30 days prior to implementing any open-office landscape proposal.

CHAPTER 586

An act to amend Sections 39891, 39902, and 42603 of, to add Sections 39891.5, 42646.3 and 85260.5 to, and to add Article 7 (commencing with Section 1350) to Chapter 2 of Part 2 of, Article 6 (commencing with Section 42850) to Chapter 10 of Part 24 of, and Article 4 (commencing with Section 85430) to Chapter 9 of Part 50 of, the Education Code, relating to education.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Article 7 (commencing with Section 1350) is added to Chapter 2 of Part 2 of the Education Code, to read:

Article 7. Retiree Benefit Funds

1350. A county superintendent of schools may establish a retiree benefit fund to accumulate restricted moneys from salary reduction agreements, other contributions for employee retirement benefit payments, or both. Moneys may be transferred to the fund from other funds by periodic expense charges, in amounts based on existing and future obligation requirements. Payments from the retiree benefit fund for insurance, annuities, administrative costs, or any other authorized purpose shall be made in accordance with all warrant approval requirements applicable under this code.

SEC. 2. Section 39891 of the Education Code is amended to read:

39891. The cafeteria fund shall be used only for those expenditures authorized by the governing board as necessary for the operation of school cafeterias, including, but not limited to, expenditures for the lease or purchase of additional cafeteria equipment for the central food processing plant, vending machines and their installation and housing, and computer equipment and related software.

Whenever a cafeteria fund is operated pursuant to these provisions, the governing board may authorize the establishment of one or more cafeteria revolving accounts. For accounting purposes, a cafeteria revolving account is to be treated as a revolving cash account of the cafeteria fund, providing that the receipt of income and expenditures made from a cafeteria revolving account become recorded as income and expenditures of the cafeteria fund. Appropriate transfers, replenishments, and deposits between the cafeteria fund and a cafeteria revolving account may occur as are necessary to comply with accounting requirements. A cafeteria revolving account may receive and expend moneys in the same manner and for the same purposes as authorized for a cafeteria account.

The governing board of any school district, or of two or more school districts governed by governing boards of identical personnel, may also make expenditures from the cafeteria fund for the construction, alteration, or improvement of a central food processing plant, for the installation of additional cafeteria equipment for the central food processing plant, and for the lease or purchase of vehicles used primarily in connection with the central food processing plant.

SEC. 3. Section 39891.5 is added to the Education Code, to read:

39891.5. The governing board of any school district with an average daily attendance of over 100,000 may allow as an expenditure from the cafeteria fund or account a share of money agreed upon pursuant to a contract, which is generated from the joint sale of items between the cafeteria and an associated student body student store. The expenditure must result from an agreement entered into by the cafeteria and the associated student body in which students will participate in the operation of the store.

SEC. 4. Section 39902 of the Education Code is amended to read:

39902. The governing board of a school district shall employ persons for food service positions as part of the classified service, except that school districts may utilize the services of volunteers for programs that provide meals for senior citizens as authorized pursuant to Chapter 6 (commencing with Section 9500) of Division 8.5 of the Welfare and Institutions Code. Wages, salaries, and benefits, including employer retirement contributions for food service personnel, shall be paid from the general fund of the school district or from the cafeteria fund, at the discretion of the governing board and upon approval of the county superintendent of schools who has responsibility for a countywide payroll/retirement system under Sections 42646 and 85260. Expenses of the general fund under this section for the costs of wages, salaries, and benefits, including employer retirement contributions and other purposes classed as food service, shall be excluded from the definition of "current expense of education" as defined in Section 41372. The governing board may, at any time, order reimbursement from the cafeteria fund or account to the general fund of the district for payments under this section in such amounts as it prescribes but not to exceed food service employee salary, wage and benefit costs actually incurred.

Any reimbursements in excess of the amount actually required shall be refunded to the cafeteria fund or account not later than the close of the current fiscal year.

The reimbursements from the cafeteria fund or account shall be considered expenses of the cafeteria fund or account, as the case may be, and only those payments made from the general fund that are not reimbursed from the cafeteria fund or account shall be considered expenses of the general fund.

Accounting for those transactions shall be as prescribed in Section 41010.

SEC. 5. Section 42603 of the Education Code is amended to read:

42603. The governing board of any school district may direct that moneys held in any fund or account may be temporarily transferred to another fund or account of the district for payment of obligations. The transfer shall be accounted for as temporary borrowing between funds or accounts and shall not be available for appropriation or be considered income to the borrowing fund or account. Amounts transferred shall be repaid either in the same fiscal year, or in the following fiscal year if the transfer takes place within the final 120 calendar days of a fiscal year. Borrowing shall occur only when the fund or account receiving the money will earn sufficient income, during the current fiscal year, to repay the amount transferred. No more than 75 percent of the maximum of moneys held in any fund or account during a current fiscal year may be transferred.

SEC. 6. Section 42646.3 is added to the Education Code, to read:

42646.3. A payroll clearance fund, for the purpose of consolidating and balancing payroll deductions and other payroll accounting purposes for one or more school district employees whose salary is paid from one or more funds, may be established by the governing board of the school district or, if the district operates under the payroll procedures set forth in Section 42646, by the county superintendent of schools.

SEC. 7. Article 6 (commencing with Section 42850) is added to Chapter 10 of Part 24 of the Education Code, to read:

Article 6. Retiree Benefit Funds

42850. The governing board of any school district may establish a retiree benefit fund to accumulate restricted moneys from salary reduction agreements, other contributions for employee retirement benefit payments, or both. Moneys may be transferred to the fund from other funds by periodic expense charges, in amounts based on existing and future obligation requirements. Payments from the retiree benefit fund for insurance, annuities, administrative costs, or any other authorized purpose shall be made in accordance with all warrant approval requirements applicable under this code.

SEC. 8. Section 85260.5 is added to the Education Code, to read:

85260.5. A payroll clearance fund for the purpose of consolidating and balancing payroll deductions and other payroll accounting purposes for one or more community college district employees whose salary is paid from one or more funds, may be established by the governing board of the community college district or, if the district operates under the payroll procedure set forth in Section 85260, by the county superintendent of schools.

SEC. 9. Article 4 (commencing with Section 85430) is added to Chapter 9 of Part 50 of the Education Code, to read:

Article 4. Retiree Benefit Funds

85430. The governing board of any community college district may establish a retiree benefit fund to accumulate restricted moneys from salary reduction agreements, other contributions for employee retirement benefit payments, or both. Moneys may be transferred to the fund from other funds by periodic expense charges, in amounts based on existing and future obligation requirements. Payments from the retiree benefit fund for insurance, annuities, administrative costs, or any other authorized purpose shall be made in accordance with all warrant approval requirements applicable under this code.

CHAPTER 587

An act to amend Sections 10139 and 10185 of the Business and Professions Code, relating to real estate.

[Approved by Governor September 11, 1987 Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 10139 of the Business and Professions Code is amended to read:

10139. Any person acting as a real estate broker or real estate salesperson without a license or who advertises using words indicating that he or she is a real estate broker without being so licensed shall be guilty of a public offense punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding fifty thousand dollars ($50,000).

SEC. 2. Section 10185 of the Business and Professions Code is amended to read:

10185. Any person, including officers, directors, agents or employees of corporations, who willfully violates or knowingly participates in the violation of this division shall be guilty of a misdemeanor punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the county jail not exceeding six months, or by a fine and imprisonment.

CHAPTER 588

An act to amend Section 10177 of the Business and Professions Code, relating to real estate.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 10177 of the Business and Professions Code is amended to read:

10177. The commissioner may suspend or revoke the license of any real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or any salesperson, by fraud, misrepresentation or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal or reinstatement.

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(c) Knowingly authorized, directed, connived at or aided in the publication, advertisement, distribution, or circulation of any material false statement or representation concerning his or her business, or any business opportunity or any land or subdivision (as defined in Chapter 1 (commencing with Section 11000) of Part 2) offered for sale.

(d) Willfully disregarded or violated any of the provisions of the Real Estate Law (Part 1 (commencing with Section 10000) or of Chapter 1 (commencing with Section 11000) of Part 2 or of the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(e) Willfully used the term "realtor" or any trade name or insignia of membership in any real estate organization of which the licensee is not a member.

(f) Acted or conducted himself or herself in a manner which would have warranted the denial of his or her application for a real estate license, or has either had a license denied or a license issued by another agency of this state, another state, or the federal government, revoked or suspended for acts which if done by a real

estate licensee would be grounds for the suspension or revocation of a California real estate license; provided, however, that the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedures Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

(g) Demonstrated negligence or incompetence in performing any act for which he or she is required to hold a license.

(h) If, as a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons; or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

(i) Has used his or her employment by a governmental agency in a capacity giving access to records, other than public records, in such manner as to violate the confidential nature of the records.

(j) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(k) Violated any of the terms, conditions, restrictions, and limitations contained in any order granting a restricted license.

(*l*) Solicited or induced the sale, lease or the listing for sale or lease, of residential property on the ground, wholly or in part, of loss of value, increase in crime, or decline of the quality of the schools, due to the present or prospective entry into the neighborhood of a person or persons of another race, color, religion, ancestry or national origin.

(m) Violated any of the provisions of the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) or any regulations of the Commissioner of Corporations pertaining thereto.

(n) Violated any of the provisions of the Corporations Code or of the regulations of the Commissioner of Corporations relating to securities as specified in Section 25206 of the Corporations Code.

CHAPTER 589

An act to amend Sections 5536.2, 5537, and 6737.1 of the Business and Professions Code, relating to architecture.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 5536.2 of the Business and Professions Code is amended to read:

5536.2. Each county or city which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, or repair of any building or structure shall also require as a condition precedent to the issuance of the permit a signed statement that the person who has prepared the plans and specifications for the construction, alteration, improvement, or repair of the building or structure is licensed under this chapter to prepare the plans and specifications, or is otherwise licensed in this state to prepare the plans and specifications.

The signature and license number on the plans and specifications of a person who is licensed to prepare the plans and specifications shall constitute compliance with this section.

It is the responsibility of the agency that issues the permit to determine that the person who signed the plans and specifications or who submitted the signed statement required by this section is licensed under this chapter or is otherwise licensed in this state to prepare the plans and specifications.

This section shall not apply to the issuance of permits where the preparation of plans and specifications for the construction, alteration, improvement, or repair of a building or structure is exempt from the provisions of this chapter, except that the person preparing the plans and specifications for others shall sign the plans and specifications as provided by Section 5536.1.

SEC. 2. Section 5537 of the Business and Professions Code is amended to read:

5537. (a) This chapter does not prohibit any person from preparing plans, drawings, or specifications for any of the following:

(1) Single-family dwellings of woodframe construction not more than two stories and basement in height.

(2) Multiple dwellings containing no more than four dwelling units of woodframe construction not more than two stories and basement in height. However, this paragraph shall not be construed as allowing an unlicensed person to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four units on any lawfully divided lot.

(3) Garages or other structures appurtenant to buildings

described under subdivision (a), of woodframe construction not more than two stories and basement in height.

(4) Agricultural and ranch buildings of woodframe construction, unless the building official having jurisdiction deems that an undue risk to the public health, safety, or welfare is involved.

(b) If any portion of any structure exempted by this section deviates from substantial compliance with conventional framing requirements for woodframe construction found in the most recent edition of Title 24 of the California Administrative Code or tables of limitation for woodframe construction, as defined by the applicable building code duly adopted by the local jurisdiction or the state, the building official having jurisdiction shall require the preparation of plans, drawings, specifications, or calculations for that portion by, or under the direct supervision of, a licensed architect or registered engineer. The documents for that portion shall bear the stamp and signature of the licensee who is responsible for their preparation. Substantial compliance for purposes of this section is not intended to restrict the ability of the building officials to approve plans pursuant to existing law and is only intended to clarify the intent of Chapter 405 of the Statutes of 1985.

SEC. 3. Section 6737.1 of the Business and Professions Code is amended to read:

6737.1. (a) This chapter does not prohibit any person from preparing plans, drawings, or specifications for any of the following:

(1) Single-family dwellings of woodframe construction not more than two stories and basement in height.

(2) Multiple dwellings containing no more than four dwelling units of woodframe construction not more than two stories and basement in height. However, this paragraph shall not be construed as allowing an unlicensed person to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four units on any lawfully divided lot.

(3) Garages or other structures appurtenant to buildings described under subdivision (a), of woodframe construction not more than two stories and basement in height.

(4) Agricultural and ranch buildings of woodframe construction, unless the building official having jurisdiction deems that an undue risk to the public health, safety or welfare is involved.

(b) If any portion of any structure exempted by this section deviates from substantial compliance with conventional framing requirements for woodframe construction found in the most recent edition of Title 24 of the California Administrative Code or tables of limitation for woodframe construction, as defined by the applicable building code duly adopted by the local jurisdiction or the state, the building official having jurisdiction shall require the preparation of plans, drawings, specifications, or calculations for that portion by, or under the direct supervision of, a licensed architect or registered engineer. The documents for that portion shall bear the stamp and signature of the licensee who is responsible for their preparation.

CHAPTER 590

An act to amend Sections 73565, 73566, 73567, and 73568 of the Government Code, relating to courts.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 73565 of the Government Code is amended to read:

73565. The municipal court judges may, by a majority vote, appoint a municipal court administrator who shall be the clerk of the municipal court. The municipal court administrator shall serve at the pleasure of a majority of the judges. He or she shall receive a salary of three thousand nine hundred sixty-eight dollars ($3,968) monthly, provided, however, that the salary may be adjusted pursuant to Section 73568. He or she shall be the appointing authority for those positions listed in Section 73566.

The municipal court judges shall prescribe and regulate by majority vote the duties and authority of the municipal court administrator among which shall be:

(a) To direct and coordinate the nonjudicial activities of the district.

(b) To coordinate the personnel practices in compliance with rules of the district and those of the County of Monterey.

(c) To prepare and administer the budget of the district.

(d) To coordinate with county agencies, the acquisition, utilization, maintenance, and disposition of facilities, equipment, and supplies necessary for the operation of the district.

(e) To initiate studies and prepare appropriate recommendations and reports to the presiding judge and judges relating to the business of the district, including, but not limited to, such matters as standardization of forms, procedures, and of classification and compensation of court attachés.

(f) To collect, compare, and analyze statistical data on a continuing basis concerning the status of judicial and nonjudicial business of the district and to prepare periodic reports and recommendations based on such data.

(g) To provide for and conduct a program of in-service training for the personnel of the municipal court.

(h) To prepare procedural guides for the personnel of the municipal court.

(i) To make arrangements for and attend all meetings of the judges, to assist in the preparation of the agenda, and to prepare

minutes of the meetings of the judges.

(j) To serve as liaison for the district with other persons, committee boards, groups, and associations as directed by the presiding judge.

SEC. 2. Section 73566 of the Government Code is amended to read:

73566. The number of positions within each job classification which may be filled by appointment by the municipal court administrator, and the salary which constitutes the compensation for each job classification, are as follows; provided, however, that the board of supervisors may adjust the monthly salary pursuant to Section 73568, and may adjust the number and classification of positions pursuant to Section 73569:

Number	Classification	Monthly salary
1	Assistant Municipal Court Clerk/ Administrator	$3,112 Flat
1	Municipal Court Division Manager II	2,461–3,049
1	Administrative Assistant	2,087–2,586
1	Municipal Court Division Manager I	2,087–2,586
2	Municipal Court Calendar Coordinator	1,626–2,015
1	Departmental Data-Processing Coordinator	1,532–1,898
1	Accounting Technician	1,586–1,965
2	Senior Account Clerk	1,366–1,692
6	Account Clerk	1,194–1,479
7	Municipal Court Clerk IV	1,570–1,946
7	Municipal Court Clerk III	1,345–1,667
38.5	Municipal Court Clerk II	1,194–1,479
12	Courtroom Clerk	1,539–1,907
5	Court Interpreter	1,421–1,761
1	Senior Court Interpreter	1,570–1,946
1	Senior Secretary	1,539–1,907
1	Secretary	1,393–1,726
1	Secretarial Assistant	1,255–1,554
2	Senior Data Entry Operator	1,326–1,642
6	Data Entry Operator II	1,159–1,435

SEC. 3. Section 73567 of the Government Code is amended to read:

73567. Whenever reference to a salary other than that of commissioner is made in any section of this article, the schedule of salaries found in the salary and benefits resolution of the County of Monterey in effect on January 1, 1987, shall apply; provided, however, that adjustments to such salaries may be made pursuant to Section 73568.

SEC. 4. Section 73568 of the Government Code is amended to read:

73568. Certain classes of positions prescribed in this article are deemed to be equivalent in job and salary level to certain classes of positions of Monterey County. In order to maintain parity of compensation and employee benefits between attachés of the municipal court and county employees having commensurate duties and responsibilities and to provide appropriate salary adjustments and employee benefits for related classes of court positions the provisions of this section shall govern salary adjustments and employee benefits for attachés of the municipal court in Monterey County.

On the effective date of any amendment to such resolution adjusting the salary of a county employee classification listed in the table of positions set forth in this section, the salary of the equivalent court position listed opposite thereto shall be adjusted an equivalent amount.

Any adjustments made pursuant to this section shall be effective on the operative date of the county salary and benefits resolution and shall remain in effect only until January 1, of the second year following the year in which such change is made, unless subsequently ratified by the Legislature.

Table of Positions

Court Classification	County Classification
Municipal Court Clerk/ Administrator	
Assistant Municipal Court Clerk/ Administrator	
Administrative Assistant	Administrative Assistant
Municipal Court Division Manager II	Administrative Assistant, plus 33 ranges
Municipal Court Division Manager I	Administrative Assistant
Municipal Court Calendar Coordinator	Legal Process Clerk, plus 62 ranges
Departmental Data-Processing Coordinator	Departmental Data-Processing Coordinator
Accounting Technician	Accounting Technician
Senior Account Clerk	Senior Account Clerk
Account Clerk	Account Clerk
Municipal Court Clerk IV	Legal Process Clerk, plus 55 ranges
Municipal Court Clerk III	Legal Process Clerk, plus 24 ranges
Municipal Court Clerk II	Legal Process Clerk
Courtroom Clerk	Courtroom Clerk
Court Interpreter	Legal Process Clerk, plus 35 ranges

Senior Court Interpreter	Legal Process Clerk, plus 55 ranges
Senior Secretary	Senior Secretary
Secretary	Secretary
Secretarial Assistant	Secretarial Assistant
Senior Data Entry Operator	Senior Data Entry Operator
Data Entry Operator II	Data Entry Operator II

Attachés of the municipal court district shall be entitled to all employee benefits that are provided for or made applicable to the equivalent Monterey County employee classification, including, but not limited to, anniversary dates, changes thereto, and step advancements.

Whenever reference is made to a number of salary ranges in any section of this article, such reference shall be to ranges listed in the salary and benefits resolution of the County of Monterey in effect January 1, 1987.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 591

An act to amend Section 2855 of the Labor Code, relating to employment.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 2855 of the Labor Code is amended to read:

2855. (a) Except as otherwise provided in subdivision (b), a contract to render personal service, other than a contract of apprenticeship as provided in Chapter 4 (commencing with Section 3070), may not be enforced against the employee beyond seven years from the commencement of service under it. Any contract, otherwise valid, to perform or render service of a special, unique, unusual, extraordinary, or intellectual character, which gives it peculiar value and the loss of which can not be reasonably or adequately compensated in damages in an action at law, may nevertheless be enforced against the person contracting to render the service, for a term not to exceed seven years from the commencement of service under it. If the employee voluntarily continues to serve under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

(b) Notwithstanding subdivision (a):

(1) Any employee who is a party to a contract to render personal service in the production of phonorecords in which sounds are first fixed, as defined in Section 101 of Title 17 of the United States Code, may not invoke the provisions of subdivision (a) without first giving written notice to the employer in accordance with Section 1020 of the Code of Civil Procedure, specifying that the employee from and after a future date certain specified in the notice will no longer render service under the contract by reason of subdivision (a).

(2) Any party to such a contract shall have the right to recover damages for a breach of the contract occurring during its term in an action commmenced during or after its term, but within the applicable period prescribed by law.

(3) In the event a party to such a contract is, or could contractually be, required to render personal service in the production of a specified quantity of the phonorecords and fails to render all of the required service prior to the date specified in the notice provided in paragraph (1), the party damaged by the failure shall have the right to recover damages for each phonorecord as to which that party has failed to render service in an action which, notwithstanding paragraph (2), shall be commenced within 45 days after the date specified in the notice.

SEC. 2. The Legislature does not intend that the provisions of this act support any inference about the meaning of Section 2855 of the Labor Code prior to the operative date of this act or with respect to any industry other than the phonorecord industry.

CHAPTER 592

An act to amend Section 41960.2 of, and to add Section 41960.5 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 41960.2 of the Health and Safety Code is amended to read:

41960.2. (a) All installed systems for the control of gasoline vapors resulting from motor vehicle fueling operations shall be maintained in good working order in accordance with the manufacturer's specifications of the system certified pursuant to Section 41954.

(b) Whenever a gasoline vapor recovery control system is repaired or rebuilt by someone other than the original manufacturer or its authorized representative, the person shall permanently affix a plate to the vapor recovery control system which identifies the

repairer or rebuilder and specifies that only certified equipment was used. In addition, a rebuilder of a vapor control system shall remove any identification of the original manufacturer where the removal does not affect the continued safety or performance of the vapor control system.

(c) The state board shall identify equipment defects in systems for the control of gasoline vapors resulting from motor vehicle fueling operations which substantially impair the effectiveness of the systems in reducing air contaminants.

(d) When a district determines that a component contains a defect specified pursuant to subdivision (c), the district shall mark the component "Out of Order". No person shall use or permit the use of the component until the component has been repaired, replaced, or adjusted, as necessary, and the district has reinspected the component or has authorized use of the component pending reinspection.

(e) Where a district determines that a component is not in good working order but does not contain a defect specified pursuant to subdivision (c), the district shall provide the operator with a notice specifying the basis on which the component is not in good working order. If, within seven days, the operator provides the district with adequate evidence that the component is in good working order, the operator shall not be subject to liability under this division.

SEC. 2. Section 41960.5 is added to the Health and Safety Code, to read:

41960.5. (a) No retailer, as defined in Section 20999 of the Business and Professions Code, shall allow the operation of any gasoline pump from which leaded gasoline is dispensed, or which is labeled as providing leaded gasoline, unless the pump is equipped with a nozzle spout meeting the required specifications for leaded gasoline nozzle spouts set forth in Title 40, Code of Federal Regulations, Section 80.22(f)(1).

(b) For the purpose of this section, "leaded gasoline" means gasoline which is produced with the use of any lead additive or which contains more than 0.05 gram of lead per gallon or more than 0.005 gram of phosphorus per gallon.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 593

An act to amend Section 980 of the Government Code, relating to public works contracts.

[Approved by Governor September 11, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 980 of the Government Code is amended to read:

980. Whenever a request for payment from the state or a local entity pursuant to the terms of a contract for the construction of a public works project as defined in Section 1720 of the Labor Code is properly filed and the validity of the claim is not disputed or has been settled or agreed upon, payment of the claim by the disbursing officer of the state or local public entity shall include interest at the legal rate of 7 percent per annum commencing on the date upon which the claim was submitted if payment has not been made by the 60th day after the proper submission of the claim.

CHAPTER 594

An act relating to education.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987]

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

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

(a) That California's non-Asian ethnic minorities will comprise nearly half the state's student population by the year 2000.

(b) That California's non-Asian ethnic minorities drop out of the state's public universities at rates approaching 60 percent.

(c) That California's non-Asian ethnic minorities drop out of the state's public high school at rates approaching 40 percent.

(d) That the Legislature passed Assembly Concurrent Resolution 83, Resolution Chapter 68 of the Statutes of 1984, creating the Intersegmental Policy Task Force on Assembly Concurrent Resolution 83 to make recommendations to improve minority student high school and college graduation rates.

(e) That the Intersegmental Policy Task Force has submitted its recommendations to the Legislature in the report Expanding Educational Equity in California's Schools and Colleges.

(f) That the Legislature, in order to effectively formulate its own

response to the report, requires status reports from each segment of public education on its implementation of its recommendations, including the specification of any impediments to implementation, especially those requiring legislative remedy.

SEC. 2. (a) The State Department of Education, the Board of Governors of the California Community Colleges, and the Trustees of the California State University, are each hereby directed to, and the Regents of the University of California are hereby requested to, report individually by June 30, 1988, on the implementation of the recommendations of the Intersegmental Policy Task Force on Assembly Concurrent Resolution 83.

(b) The reports shall be filed with the President pro Tempore of the Senate, the Speaker of the Assembly, the chairpersons of the Senate and Assembly education committees, the chairpersons of the Senate and Assembly fiscal subcommittees which consider any of the budgets for any segment of public postsecondary education, the author of Assembly Concurrent Resolution 83 (Resolution Chapter 68, Statutes of 1984), and the California Postsecondary Education Commission.

(c) Each report shall specify in detail each of the following:

(1) The extent to which the reporting segment of public education has implemented each of the task force report recommendations appropriate to it. Discussion of recommendations intended to be implemented in the future shall, for each recommendation, include a plan, timeline, and budget for implementation.

(2) Impediments to implementation of any recommendation appropriate to the reporting segment of public education and either a plan, timeline, and budget for overcoming the impediments or a rationale for the lack thereof.

(3) Identification of any recommendation appropriate to the reporting segment of public education which it intends not to implement, irrespective of impediments or absence thereof, and the rationale for the decision.

(4) New legislation which the reporting segment of public education believes necessary to implement any of the recommendations appropriate to it.

SEC. 3. Within 60 days of the receipt the report of each segment of public education, as required by Section 2, the California Postsecondary Education Commission shall evaluate the contents thereof and report its comments to the Legislature.

CHAPTER 595

An act to amend Sections 40402 and 40462 of, and to add Section 40410.5 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 40402 of the Health and Safety Code is amended to read:

40402. The Legislature finds and declares all of the following:

(a) That the South Coast Air Basin is a geographical entity not reflected by political boundaries.

(b) That the basin is acknowledged to have critical air pollution problems caused by the operation of millions of motor vehicles in the basin, stationary sources of pollution, frequent atmospheric inversions that trap aerial contaminants, and the large amount of sunshine that transforms vehicular and nonvehicular emissions into a variety of deleterious chemicals.

(c) That these critical air pollution problems are most acute in the foothill communities of the San Gabriel/Pomona Valleys and the Riverside/San Bernardino areas, where pollutants which originate in other parts of the basin are trapped by geographical and meteorological conditions characteristic of these areas.

(d) That the state and federal governments have promulgated ambient air quality standards for the protection of public health, and it is in the public interest that those standards not be exceeded.

(e) That, in order to achieve and maintain air quality within the ambient air quality standards, a comprehensive basinwide air quality management plan must be developed and implemented to provide for the rapid abatement of existing emission levels to levels which will result in the achievement and maintenance of the state and federal ambient air quality standards and to ensure that new sources of emissions are planned and operated so as to be consistent with the basin's air quality goals.

(f) That, in recognition of the fact that some regions within the basin face more critical air pollution problems than others, it is necessary for the basinwide air quality management plan to consider the specific air pollution problems of regions within the air basin in planning for facilities which create new sources of emissions.

(g) That, in order to successfully develop and implement a meaningful strategy for achieving and maintaining ambient air quality standards, local governments in the South Coast Air Basin must be delegated additional authority from the state in the control of vehicular sources and must retain existing authority to set stringent emission standards for nonvehicular sources.

(h) That, in order to successfully implement a comprehensive

program for the achievement and maintenance of state and federal ambient air quality standards in the South Coast Air Basin, the responsibilities of local and regional authorities with respect to air pollution control and air quality management plan adoption must be fully integrated into an agency with basinwide authority, largely to be governed by representatives of county and city governments.

SEC. 2. Section 40410.5 is added to the Health and Safety Code, to read:

40410.5. (a) There is hereby established within the south coast district a sensitive zone, which shall include the general forecast areas known as the San Gabriel/Pomona Valleys and the Riverside/San Bernardino areas.

(b) In addition to every other requirement for the issuance of a permit, the following requirements shall be applicable to the issuance of a permit by the south coast district for the construction or operation of any stationary source within the sensitive zone:

(1) When emission offsets are required to mitigate the air quality impacts of a stationary source, the offsets shall be secured by the applicant so as to bring about ambient air quality improvements within the sensitive zone. The applicant shall be required to demonstrate, to the satisfaction of the south coast district, that any emissions reductions acquired from stationary sources operating within the South Coast Air Basin will result in a demonstrable net ambient air quality improvement within the sensitive zone.

(2) In considering an application for a permit to construct or operate a stationary source, the south coast district board shall, in addition to making a finding and determination that the impacts of the stationary source will be mitigated so as to result in a net improvement in ambient air quality within the South Coast Air Basin, also make a finding and determination that the impacts of the stationary source can be mitigated so as to result in a net improvement in ambient air quality within the sensitive zone.

(c) The requirements of subdivision (b) shall not apply until the south coast district board has adopted rules and regulations to implement this section.

SEC. 3. Section 40462 of the Health and Safety Code is amended to read:

40462. (a) The plan and subsequent revisions shall contain deadlines for compliance with the federally mandated attainment of primary ambient air quality standards. The plan and subsequent revisions shall contain deadlines and schedules to achieve the state ambient and the federal secondary ambient air quality standards by the earliest date achievable by the application of all reasonably available control measures and technologies.

(b) The plan and subsequent revisions shall ensure that future growth and development within the South Coast Air Basin and in the sensitive zone established pursuant to subdivision (a) of Section 40410.5 are, to the maximum extent feasible, consistent with the goal of achieving and maintaining the air quality standards. The revisions

to the plan shall identify the resources necessary to carry out its provisions, including enforcement costs and the effect of its provisions on energy resources.

SEC. 3.5. Section 40462 of the Health and Safety Code is amended to read:

40462. (a) The plan and subsequent revisions shall contain deadlines for compliance with the federally mandated attainment of primary ambient air quality standards. The plan and subsequent revisions shall contain deadlines and schedules to achieve the state ambient air quality standards by the earliest date achievable by the application of all reasonably available control measures and technologies, including, but not limited to, the best available control technology, indirect source controls, and transportation control measures, and the use of cleaner burning alternative fuels. The plan and subsequent revisions shall contain deadlines and schedules to achieve the federal secondary ambient air quality standards by the earliest date achievable by the application of all reasonably available control measures and technologies.

(b) The plan and subsequent revisions shall ensure that future growth and development in the South Coast Air Basin and within the sensitive zone established pursuant to subdivision (a) of Section 40410.5 are, to the maximum extent feasible, consistent with the goal of achieving and maintaining those air quality standards. The revisions to the plan shall identify the resources necessary to carry out its provisions, including enforcement costs and the effect of its provisions on energy resources.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 40462 of the Health and Safety Code proposed by both this bill and SB 151. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 40462 of the Health and Safety Code, and (3) this bill is enacted after SB 151, in which case Section 3 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 596

An act to amend Sections 1366 and 1368 of the Civil Code, relating to homeowner's associations.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 1366 of the Civil Code is amended to read:

1366. (a) Except as provided in this section, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title.

(b) Notwithstanding more restrictive limitations placed on the board by the governing documents, the board of directors may not impose a regular assessment that is more than 20 percent greater than the regular assessment for the association's preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, quorum means more than 50 percent of the owners of an association. This section does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

(1) An extraordinary expense required by an order of a court.

(2) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.

(3) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the proforma operating budget under Section 1365. However, prior to the imposition or collection of an assessment under this subdivision, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(c) Regular and special assessments levied pursuant to the governing documents are delinquent 15 days after they become due. If an assessment is delinquent the association may recover all of the following:

(1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.

(2) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars ($10), whichever is greater, unless the declaration specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the declaration.

(3) Interest on all sums imposed in accordance with this section, including the delinquent assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed 12 percent interest, commencing 30 days after the assessment becomes due.

(d) Associations are hereby exempted from interest-rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section.

SEC. 2. Section 1368 of the Civil Code is amended to read:

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

(3) A copy of the most recent financial statement distributed pursuant to Section 1365.

(4) A true statement in writing from an authorized representative of the association as to the amount of any assessments levied upon the owner's interest in the common interest development which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Section 1367.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1), (2), (3), and (4) of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other

interest except the association's actual costs to change its records and that authorized by subdivision (b).

(d) Any person or entity who willfully violates this section shall be liable to the purchaser of a separate interest which is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars ($500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

CHAPTER 597

An act to add Section 417.2 to the Penal Code, relating to crime.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 417.2 is added to the Penal Code, to read:

417.2. (a) Every person who, except in self-defense, draws or exhibits a replica of a firearm in a threatening manner against another in such a way as to cause a reasonable person apprehension or fear of bodily harm is guilty of a misdemeanor.

(b) As used in this section, "a replica of a firearm" means any device with the apparent capability of expelling a projectile by the force of air or an explosion and which is reasonably perceived by the person against whom the device is drawn or exhibited to be an actual firearm, including starter pistols and air guns.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 598

An act to amend Sections 17871, 17873, 17880, 17883, 17883.5, 17884, 17893, 17894, 17895, 17899.1, and 17899.3 of the Education Code, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 17871 of the Education Code is amended to read:

17871. The Legislature hereby finds and declares that it is in the interest of the state and its people for the state to do all of the following:

(a) Reconstruct, remodel, or replace existing school buildings which are educationally inadequate or which do not meet current structural safety requirements.

(b) Acquire new school sites and buildings to be made available to school districts and community college districts for the pupils of the public education system, which is a matter of general concern inasmuch as the education of the state's children is an obligation and function of the state.

(c) Assist school districts and community college districts by providing access to financing for working capital and capital improvements.

SEC. 2. Section 17873 of the Education Code is amended to read:

17873. As used in this chapter, the following words and terms shall have the following meanings, unless the context indicates or requires another or different meaning or intent:

(a) "Act" means the California School Finance Authority Act.

(b) "Agent" means a county or city board of education or superintendent of schools acting with its consent on behalf of one or more school districts for any purpose of this chapter, and the Board of Governors of the California Community Colleges or the Chancellor of the California Community Colleges acting with its consent on behalf of one or more community college districts for any purpose of this chapter.

(c) "Authority" means the California School Finance Authority, or any board, body, commission, department, or officer succeeding to the principal functions of the authority, or to which the powers conferred upon the authority by this chapter shall be given by law.

(d) "Bonds" means bonds, notes, bond anticipation notes, commercial paper, and any other evidences of indebtedness.

(e) "Cost," as applied to all or part of a project financed pursuant to this chapter, means and includes all or any part of the cost of any of the following:

(1) Construction.

(2) Acquisition or improvement of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project.

(3) Demolition or removal of any buildings or structures on land acquired for a project, including the acquisition of any lands to which the buildings or structures may be moved.

(4) All machinery and equipment.

(5) Financing charges.

(6) Interest prior to, during, and for a period following, the completion of such construction or improvement as determined by the authority.

(7) Provisions for working capital.

(8) Reserves for principal and interest, and for extensions, enlargements, additions, replacements, renovations, and improvements.

(9) Engineering, architectural, financial, and legal services, plans, specifications, studies, surveys, estimates, administrative expenses, and other expenses necessary or incident to the construction, acquisition, or improvement of any project or any financing under this chapter.

(f) "Educational facility" means any property, facility, structure, equipment, or furnishings used or operated in conjunction with one or more public schools or community colleges, including, but not limited to, all of the following:

(1) Classrooms.

(2) Auditoriums.

(3) Student centers.

(4) Administrative offices.

(5) Sports facilities.

(6) Maintenance, storage, or utility facilities.

(7) All necessary or usual attendant and related facilities and equipment, including streets, parking, and supportive service facilities or structures required or useful for the effective operation of the educational facility.

(g) "Participating district" means a school district or community college district which undertakes, itself or through an agent, the financing or refinancing of a project or of working capital pursuant to this chapter. "Participating district" shall also be deemed to refer to the agent to the extent the agent is acting on behalf of the school district or community college district for any purpose of this chapter.

(h) "Project" means the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of an educational facility to be financed or refinanced pursuant to this chapter. "Project" may include any combination of the foregoing undertaken jointly by any participating district with one or more other participating districts.

(i) "Working capital" means funds to be used by, or on behalf of, a participating district to pay maintenance or operating expenses, or

any other costs which would be treated as an expense item under generally accepted accounting principles in connection with the ownership or operation of an educational facility, including, but not limited to, all of the following:

(1) Reserves for maintenance or operating expenses.

(2) Interest for a period not to exceed one year on any loan for working capital made pursuant to this chapter.

(3) Reserves for debt service, and any other costs necessary or incidental to, financing pursuant to this chapter.

(j) "Certificate of participation" means an undivided interest in one or more bonds, leases, loans, installment sales, or other agreements of a participating district or districts.

SEC. 3. Section 17880 of the Education Code is amended to read:

17880. The authority is hereby authorized to do all of the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt an official seal.

(c) Sue and be sued in its own name.

(d) Receive and accept gifts, grants, or donations of money for any of the purposes of this chapter from any of the following:

(1) A federal agency.

(2) A state agency.

(3) A municipality, county, or other political subdivision of the state.

(4) An individual, association, or corporation.

(e) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this chapter.

(f) (1) Determine the location and character of any project to be financed under this chapter, and acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, lease as lessee or lessor, or regulate the same.

(2) Designate a participating district as its agent, with authority to enter into contracts, for any of the purposes specified in paragraph (1).

(3) Enter into contracts for any of the purposes specified in paragraph (1).

(4) Enter into contracts for the management and operation of a project owned by the authority.

(g) Acquire, directly or by and through a participating district as its agent, by purchase solely from funds provided pursuant to this chapter, or by gift or devise, and sell, by installment or otherwise, property, rights, rights-of-way, franchises, easements, and other interests in lands, including, but not limited to, lands lying under water, and riparian rights, located within the state which the authority deems necessary or convenient for the acquisition, construction, financing, or operation of a project. The authority may

do so upon the terms, and at the prices, it considers reasonable and upon which it can agree with the owner, and may take the title to the interest in the name of the authority or in the name of a participating district as its agent.

(h) Receive and accept from any source loans, contributions, or grants for, or in aid of, the construction, financing, or refinancing of all or part of a project, in the form of money, property, labor, or other things of value.

(i) Pursuant to an agreement between the authority and the participating district, make, directly or through a lending institution, secured or unsecured loans to, or purchase secured or unsecured loans from, a participating district for any of the following purposes:

(1) To finance a project or provide working capital. No loan to finance a project shall exceed the total cost of the project, as determined by the participating district and approved by the authority.

(2) To refinance indebtedness incurred by the participating district in connection with projects undertaken, educational facilities acquired, or working capital financed.

(j) Upon the terms and conditions the authority deems proper, lease a project being financed pursuant to this chapter to a participating district, and charge and collect rent therefor. The authority may terminate a lease pursuant to this subdivision upon the lessee's failure to comply with any of its obligations under the lease. The lease may include any of the following provisions:

(1) That the lessee shall have the option to renew the term of the lease for the period or periods, and at the rent, determined by the authority, or to purchase any or all of the project.

(2) That upon payment by the participating district of all of the indebtedness incurred by the authority for the financing of the project or for the refinancing of the district's outstanding indebtedness, the authority may convey any or all of the project to the lessee or lessees, with or without further consideration.

(k) Charge and equitably apportion among participating districts its administrative costs and expenses incurred pursuant to this chapter.

(*l*) (1) Obtain, or aid in obtaining, from any state or federal agency or any private company, any insurance, guarantee, letter, or line of credit regarding, or of, or for, the payment or repayment of all or part of the interest, principal, or both, on any loan, lease, or obligation, or any instrument evidencing or securing the same, made or entered into pursuant to this chapter, or on any bonds issued pursuant to this chapter.

(2) Notwithstanding any other provision of this chapter, enter into any agreement, contract, or any other instrument regarding any insurance, guarantee, letter, or line of credit specified in paragraph (1), and accept payment in the manner and form provided therein in the event of default by a participating district.

(3) Assign any insurance, guarantee, letter, or line of credit

specified in paragraph (1) as security for bonds issued by the authority.

(m) Enter into any agreements or contracts, including, but not limited to, agreements for liquidity or credit enhancement, execute any instruments, and any other act or thing necessary, convenient, or desirable for the purposes of the authority or to carry out any express power granted the authority pursuant to this chapter.

(n) At the discretion of the authority, invest any moneys held in reserve or in sinking funds, or any moneys not required for immediate use or disbursement, in obligations authorized by the resolution authorizing the bonds secured by the investment, or by law governing the investment of trust funds in the custody of the Treasurer.

SEC. 4. Section 17883 of the Education Code is amended to read:

17883. (a) From time to time, the authority may, by resolution, issue its revenue bonds in order to provide funds for any of the purposes of this chapter. Bonds may be issued to finance any of the following:

(1) A single project or financing of working capital for a single participating district.

(2) A series of projects or financings of working capital for a single participating district.

(3) A single project or financing of working capital for several participating districts.

(4) Several projects or financing of working capital for several participating districts.

(b) Except as otherwise expressly provided by the authority, all revenue bonds shall be payable from any available revenues or moneys of the authority not otherwise pledged, subject only to any agreements with holders of particular bonds or notes pledging any particular revenue or moneys. Notwithstanding that revenue bonds issued pursuant to this section may be payable from a special fund, the revenue bonds shall be, and shall be deemed to be for all purposes, negotiable instruments, subject only to the provisions of the revenue bonds for registration.

(c) The revenue bonds of the authority may be issued as serial bonds, term bonds, or the authority, in its discretion, may issue bonds of both types. The issuance shall be in accordance with the indenture, trust agreement, or resolution relating to the revenue bonds, which shall provide all of the following:

(1) The date or dates of the bonds.

(2) The date or dates upon which the bonds will mature, not to exceed 40 years from their respective dates.

(3) The interest rate or rates, or methods of determining the interest rate or rates, of the bonds.

(4) When the bonds are payable.

(5) The denominations of the bonds.

(6) The form of the bonds, which shall be either bearer or registered.

(7) The registration privileges of the bonds.

(8) The manner in which the bonds are to be executed.

(9) The place or places at which the bonds shall be payable in lawful money of the United States of America.

(10) The terms of redemption of the bonds.

(d) After giving due consideration to the recommendations of the participating district or districts, the revenue bonds of the authority shall be sold by the Treasurer at either a public or private sale at a price or prices, and upon the terms and conditions prescribed by the authority. The revenue bonds of the authority may be sold at, above, or below the par value of the bonds.

(e) Pending the preparation of the definitive bonds, the authority may issue interim receipts or certificates or temporary bonds which shall be exchanged for the definitive bonds.

(f) Any resolution authorizing the issuance of any bonds of the authority, or any issue of revenue bonds of the authority, may include any of the following provisions:

(1) Provisions pledging all or any part of the proceeds of the bonds or revenue of a project or loan.

(2) Provisions concerning the replacement of mutilated, destroyed, stolen, or lost bonds.

(3) Provisions specifying insurance to be maintained on the project and the authorized uses of the proceeds of the insurance.

(4) Covenants against the mortgaging or otherwise encumbering, selling, leasing, pledging, placing a charge upon, or otherwise disposing of the project prior to the payment of the bonds issued to finance the project.

(5) Provisions specifying the events of default, terms upon which the bonds may be declared due before maturity, and the terms upon which the declaration and its consequences may be waived.

(6) The rights, liabilities, powers, and duties arising upon the breach of any covenants, conditions, or obligations.

(7) Vesting of the right to enforce covenants in a trustee.

(8) The terms upon which all or any percentage of the bondholders may enforce covenants or duties.

(9) Procedures for amending the terms of the resolution, with or without the consent of the holders of a specified number of bonds.

(10) Provision for any other acts or things deemed necessary, convenient, or desirable by the authority to secure the bonds or improve their marketability.

(g) The validity of the authorization and issuance of any bond issue shall not be affected by proceedings for the acquisition, construction, or improvement of any project, or by contracts relating to those proceedings. Any resolution authorizing the issuance of any bonds of the authority may provide authorization for the bonds to bear a statement certifying that they are issued pursuant to this chapter. Bonds bearing such a statement shall be conclusively deemed valid and issued in conformity with this chapter. Reference on the face of the bonds to the resolution by its date of adoption shall

incorporate the provisions of the resolution and of this chapter into the terms of the bonds.

(h) Members of the authority, or any person executing the revenue bonds of the authority, shall not incur personal liability on the bonds, nor shall these persons incur personal liability or accountability by reason of the issuance of the revenue bonds of the authority.

(i) The authority is authorized, out of any funds available for that purpose, to purchase revenue bonds of the authority. The authority may hold, pledge, cancel, or resell any bonds purchased under the authority of this subdivision, subject to, and in accordance with, agreements with bondholders.

(j) The financing or refinancing of projects or working capital may be provided pursuant to this chapter by means other than revenue bonds, at the discretion of the authority, including financing or refinancing through certificates of participation, or other interests, in bonds, loans, leases, installment sales, or other agreements of the participating district or districts. In this connection, the authority may do all things and execute and deliver all documents and instruments as may be necessary or desirable with regard to issuance of the certificates of participation or other means of financing or refinancing.

SEC. 5. Section 17883.5 of the Education Code is amended to read:

17883.5. In enacting this chapter, it is the intent of the Legislature to provide financing only for projects demonstrated by the participating district to be financially feasible. In demonstrating financial feasibility, the participating district may take into account all district funds, and may base future projections upon historical experience or reasonable expectations, or a combination thereof. Nothing in this section shall be construed to imply that any project is required to produce revenue in order to be financed under this chapter.

SEC. 6. Section 17884 of the Education Code is amended to read:

17884. (a) In the discretion of the authority, any revenue bonds of the authority issued under this chapter may be secured by a trust agreement, or by indenture by and between the authority and a corporate trustee or trustees, including the Treasurer or any trust company or bank having the powers of a trust company within or outside the state.

(b) Any trust agreement, indenture, or any resolution providing for the issuance of bonds of the authority, may pledge or assign the proceeds of the bonds, and the revenues to be received by, a participating district or districts.

(c) Any trust agreement, indenture, or resolution providing for the issuance of revenue bonds of the authority may include any provisions for the protection of, and the enforcement of the rights and remedies of, bondholders as may be reasonable and proper and not in violation of any law, including provisions included in any

resolution or resolutions of the authority provided under subdivision (a) or (b).

(d) Any trust agreement or indenture may prescribe the rights and remedies of the bondholders, and of the trustee or trustees, and may restrict the individual right of action of the bondholders.

(e) Any trust agreement, indenture, or resolution may include any other provisions deemed by the authority to be reasonable and proper for the security of the bondholders.

(f) Notwithstanding any other provision of law, the Treasurer shall not be deemed to have a conflict of interest by reason of his or her capacity as trustee pursuant to this chapter.

SEC. 7. Section 17893 of the Education Code is amended to read:

17893. (a) The authority shall fix, revise, charge, and collect rents for the use of each project owned by the authority, and may contract with any person, partnership, association, corporation, or other body, whether public or private, for that purpose. Any lease entered into by the authority with a participating district, and each agreement, note, or other instrument evidencing the obligations of a participating district to the authority, shall provide that the rents or principal, interest, and other charges payable by the participating district shall be sufficient to provide for all of the following:

(1) To pay the principal, sinking fund payments, if any, premiums, if any, and the interest on outstanding bonds of the authority issued in respect of the project when due and payable.

(2) To create and maintain reserves which may, but need not necessarily be required or provided for, in the resolution relating to the revenue bonds of the authority.

(3) To pay its share of the administrative costs and expenses of the authority.

(b) The authority shall pledge the revenues derived and to be derived from a project or from a participating district for the purposes specified in paragraphs (1), (2), and (3) of subdivision (a). The authority may issue additional revenue bonds which may be ranked on a parity with other bonds relating to the project to the extent, and under the terms and conditions provided, in the bond resolution.

(c) The authority and a participating district may include in any lease or agreement between them or with a credit provider any terms and conditions relating to insurance, liquidity, or credit enhancement of the bonds, or any other lawful terms and conditions the authority deems necessary or desirable to facilitate the purposes of this chapter.

SEC. 8. Section 17894 of the Education Code is amended to read:

17894. The authority may authorize any participating district to act as its agent in the performance of acts specifically approved by the authority, and all acts required under Article 3 (commencing with Section 39140) of Chapter 1 of Part 23. The authorizations may include, but are not necessarily limited to, all of the following:

(a) The selection of school or college sites.

(b) The securing of appraisals.

(c) Contracts for architectural services.

(d) The advertisement for construction bids and the entry into contracts for construction.

(e) The purchase of furniture and equipment.

SEC. 9. Section 17895 of the Education Code is amended to read:

17895. Whenever the principal and interest on bonds issued by the authority to finance the cost of a project, or to refinance the outstanding indebtedness of one or more participating districts, including any refunding bonds issued to refund and refinance those bonds, have been fully paid or retired, or whenever adequate provision has been made to fully pay and retire the bonds, and all other conditions of the resolution, lease, trust indenture and any security interest, or any other instrument or instruments authorizing and securing the bonds have been satisfied and the lien of security interest has been released in accordance with those provisions, the authority shall promptly provide for and execute any releases, release deeds, reassignments, deeds, and conveyances as are necessary and required to convey or release its rights, title, and interest in the project financed, to the participating districts.

SEC. 10. Section 17899.1 of the Education Code is amended to read:

17899.1. (a) Any participating district, exclusively for the purpose of securing financing or refinancing of projects or working capital pursuant to this chapter through the issuance of revenue bonds, certificates of participation, or other means, and notwithstanding any other provision of law, may issue bonds to the authority or borrow money or purchase or lease educational facilities from the authority, and in connection therewith, sell or lease property to the authority, at any interest rate or rates, rental provisions, with any maturity date or dates or term, and with any other payment, security, default, remedy, and other terms or provisions as may be specified in the bonds of the participating district or a loan, loan purchase, installment sale, lease, or other agreement between the authority and the participating district, subject to the following conditions:

(1) The sum of the amount borrowed to finance working capital and the interest payable thereon at the initial interest rate if interest is variable, shall not exceed 85 percent of the estimated amount of uncollected taxes, income, revenue, cash receipts, and other district funds which will be available in any fiscal year for the repayment of the loan and the interest thereon. For purposes of this paragraph, "revenue" includes, but is not limited to, federal and state funds received by the district.

(2) In computing the maximum amount which may be borrowed in any fiscal year pursuant to paragraph (1), the district may exclude the amount of any principal or interest which is secured by a pledge of the amount in any inactive or term deposit of the district which has a term scheduled to terminate during that fiscal year.

(3) A participating district that borrows money to finance working capital pursuant to this subdivision shall be required to repay and discharge the loan within 15 months of the loan date.

(4) In enacting this chapter, it is the intent of the Legislature to provide financing of working capital needed to cover temporary or cash-flow deficits and needs for working capital and not long-term budget deficits or shortfalls in funding. The participating school district must demonstrate to the satisfaction of the authority that, during the term of any working capital loan received pursuant to this chapter, the participating district will receive or otherwise have (without additional borrowing) sufficient funds to repay and discharge the loan. The participating district may take into account all district funds and may base future projections upon historical experience or reasonable expectations, or a combination thereof.

(b) Any participating district may enter into any agreement for liquidity or credit enhancement, with any reimbursement, payment, interest, security, default, remedy, and other terms it may deem necessary or appropriate in connection with the issuance of bonds, the borrowing of money or the lease or purchase of educational facilities, whichever is applicable. Any participating district or districts may also do all things and execute all documents as may be necessary or desirable in connection with the issuance of certificates of participation, or other interests, in any bond, loan, installment sale, lease, or other agreement of the district.

(c) A school district may by resolution authorize any county or city board of education or superintendent of schools, and a community college district may by resolution authorize the Board of Governors of the California Community Colleges or the Chancellor of the California Community Colleges, to act as its agent in the performance of any of the matters permitted by this section or any other provision of this chapter. Notwithstanding any other provision of law, the agent shall have the powers granted by the resolution for purposes of this chapter. The resolution shall be deemed to bind the school district or community college district, as the case may be, to any contract, agreement, instrument, or other document executed by the agent on behalf of the school district or community college district, and all duties, obligations, or responsibilities contained therein on the part of the school district or community college district, to the same extent as if duly authorized, executed, and delivered by the school district or community college district.

(d) This section shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized by this section, and the issuance of bonds to, borrowing of money from, or sale or purchase or lease of educational facilities from or to, the authority. Any agreement entered into in connection with the issuance of bonds, the borrowing of money or the sale, purchase, or lease of educational facilities, including, without limitation, any agreement for liquidity or credit enhancement under this section, need not comply with the requirements of any other law

applicable to issuance of bonds, borrowing, selling, purchasing, leasing, pledge, encumbrance, or credit, as the case may be, by a school district or community college district, or by a county or city board of education or superintendent of schools or the Board of Governors of the California Community Colleges or Chancellor of the California Community Colleges.

SEC. 11. Section 17899.3 of the Education Code is amended to read:

17899.3. (a) The total amount of revenue bonds which may be issued and outstanding at any time under this chapter shall not exceed four hundred million dollars ($400,000,000).

(b) For purposes of subdivision (a), bonds which meet any of the following conditions shall not be deemed to be outstanding:

(1) Bonds which have been refunded pursuant to Section 17888.

(2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.

(3) Bonds which have been issued to provide working capital.

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the California School Finance Authority may retain an adequate funding base in order to finance necessary equipment and facilities for school districts and community college districts, it is necessary that this act take effect immediately.

CHAPTER 599

An act to amend Section 487 of the Penal Code, relating to crime.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 487 of the Penal Code is amended to read:

487. Grand theft is theft committed in any of the following cases:

1. When the money, labor or real or personal property taken is of a value exceeding four hundred dollars ($400); provided, that when domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding one hundred dollars ($100); provided, further, that when fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation which is producing that product, of a value exceeding one hundred dollars ($100); provided, further, that where the money, labor, real or personal property is taken by a servant, agent or

employee from his principal or employer and aggregates four hundred dollars ($400) or more in any 12 consecutive month period, then the same shall constitute grand theft.

For purposes of establishing that the value of avocados or citrus fruit under this subdivision exceeds one hundred dollars ($100), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft avocados or citrus fruit of the same variety and weight exceeded one hundred dollars ($100) in wholesale value.

2. When the property is taken from the person of another.

3. When the property taken is an automobile, firearm, horse, mare, gelding, any bovine animal, any caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow or pig.

CHAPTER 600

An act to amend Sections 21114.5 and 21663 of, and to add Section 21114.6 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 21114.5 of the Vehicle Code is amended to read:

21114.5. Notwithstanding Section 21663 or any other provision of this code, local authorities may, by ordinance, authorize the operation of electric carts by physically disabled persons, or persons 50 years of age or older, or, while in the course of their employment, by employees of the United States Postal Service, state and local governmental agencies, or utility companies, on public sidewalks. Any ordinance shall, however, contain provisions requiring any disabled person or person 50 years of age or older who owns an electric cart to apply to the local authority for a permit and an identification sticker to so operate the cart, and requiring the person to affix the sticker to the cart in order to operate it on the sidewalk.

This section does not apply to vehicles exempted from registration by Section 4011.

SEC. 2. Section 21114.6 is added to the Vehicle Code, to read:

21114.6. Notwithstanding Section 21663 or any other provision of this code, vehicles exempted from registration by Section 4011 may be operated by physically disabled persons on public sidewalks.

Section 21663 of the Vehicle Code is amended to read:

21663. Except as expressly permitted pursuant to this code, including Sections 21100.4, 21114.5, and 21114.6, no person shall operate or move a motor vehicle upon a sidewalk except as may be necessary to enter or leave adjacent property.

CHAPTER 601

An act to amend Sections 22726, 44929, and 87488 of the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 22726 of the Education Code is amended to read:

22726. Whenever the governing board of a school district or a community college district or a county superintendent of schools, by formal action, determines pursuant to Section 44929 or 87488 that because of impending curtailment of or changes in the manner of performing services, the best interests of the district or county superintendent of schools would be served by encouraging the retirement of certificated employees and that the retirement will either: (1) result in a net savings to the district or county superintendent of schools, or (2) result in a reduction of the number of certificated employees as a result of declining enrollment, or (3) result in the retention of certificated employees who are credentialed to teach in teacher shortage disciplines, including, but not limited to, mathematics and science, an additional two years of service shall be credited to a member if all of the following conditions exist:

(a) The member is credited with five or more years of service and retires during a period not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the employer which shall specify the period.

(b) The employer transmits to the retirement fund an amount determined by the Teachers' Retirement Board which equals the actuarial equivalent of the difference between the allowance the member receives after receipt of service credit under this section and the amount the member would have received without the service credit. The transfer to the retirement fund shall be made in a manner and time period acceptable to the Teachers' Retirement Board.

(c) The employer transmits to the retirement fund the administrative costs incurred by the system in implementing this section, as determined by the Teachers' Retirement Board.

(d) The employer has considered the availability of teachers to fill the positions which would be vacated pursuant to this section.

(e) The community college district has certified to the Chancellor of the California Community Colleges, and the Superintendent of Public Instruction, as to a school district or county superintendent of schools, has certified, prior to the formal action becoming effective in the district or the office of the county superintendent of schools,

that the net effect of the formal action will result in no costs to the State Teachers' Retirement System, the district, or the county superintendent of schools.

The amount of service credit shall be two years regardless of credited service, but shall not exceed the elapsed period of time intervening between the date of the member's retirement and the date the member attains normal retirement age as determined by the Teachers' Retirement Board. The employer shall make the payment with respect to all eligible employees who retired pursuant to this section.

Any member who qualifies under this section and subsequently reenters the system, shall forfeit the service credit acquired under this section.

This section shall not be applicable to any member otherwise eligible if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the effective date of the formal action, or if the member is not otherwise eligible to retire for service.

This section shall become inoperative on July 1, 1990, and, as of January 1, 1991, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1991, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 44929 of the Education Code is amended to read:

44929. Whenever the governing board of a school district or a county superintendent of schools, by formal action, determines that because of impending curtailment of or changes in the manner of performing services, the best interests of the district or county superintendent of schools would be served by encouraging the retirement of certificated employees and that the retirement will either: (1) result in a net savings to the district or county superintendent of schools, or (2) result in a reduction of the number of certificated employees as a result of declining enrollment, or (3) result in the retention of certificated employees who are credentialed to teach in teacher shortage disciplines, including, but not limited to, mathematics and science, an additional two years of service shall be credited under the State Teachers' Retirement System to a certificated employee pursuant to Section 22726 if all of the following conditions exist:

(a) The employee is credited with five or more years of service under the State Teachers' Retirement System and retires during a period not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the district or county superintendent of schools which shall specify the period.

(b) The district or county superintendent of schools transmits to the retirement fund an amount determined by the Teachers' Retirement Board which equals the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and Section 22726 and the

amount the member would have received without the service credit. The transfer to the retirement fund shall be made in a manner and time period acceptable to the Teachers' Retirement Board.

(c) The district or county superintendent of schools transmits to the retirement fund the administrative costs incurred by the State Teachers' Retirement System in implementing this section, as determined by the Teachers' Retirement Board.

(d) The governing board of the school district or the county superintendent of schools has considered the availability of teachers to fill the positions which would be vacated pursuant to this section.

(e) The Superintendent of Public Instruction has certified, prior to the formal action becoming effective in a school district or the office of the county superintendent of schools, that the net effect of the formal action will result in no costs to the State Teachers' Retirement System, the school district, or the county superintendent of schools.

The amount of service credit shall be two years regardless of credited service, but shall not exceed the elapsed period of time intervening between the date of the member's retirement and the date the member attains normal retirement age as determined by the Teachers' Retirement Board. The school district or county superintendent of schools shall make the payment with respect to all eligible employees who retired pursuant to this section and Section 22726.

Any employee who qualifies under this section and Section 22726 and subsequently reenters the State Teachers' Retirement System, shall forfeit the service credit acquired under this section and Section 22726.

This section shall not be applicable to any employee otherwise eligible if the employee receives any unemployment insurance payments arising out of employment with an employer subject to Part 13 (commencing with Section 22000) of Title 1 during a period extending one year beyond the effective date of the formal action, or if the employee is not otherwise eligible to retire for service under the State Teachers' Retirement System.

This section shall become inoperative on July 1, 1990, and, as of January 1, 1991, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1991, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 87488 of the Education Code is amended to read:

87488. Whenever the governing board of a community college district, by formal action, determines that because of impending curtailment of or changes in the manner of performing services, the best interests of the district would be served by encouraging the retirement of certificated employees and that the retirement will either: (1) result in a net savings to the district, or (2) result in a reduction of the number of certificated employees as a result of declining enrollment, or (3) result in the retention of certificated employees who are credentialed to teach in teacher shortage

disciplines, including, but not limited to, mathematics and science, an additional two years of service shall be credited under the State Teachers' Retirement System to a certificated employee pursuant to Section 22726 if all of the following conditions exist:

(a) The employee is credited with five or more years of service under the State Teachers' Retirement System and retires during a period not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the district which shall specify the period.

(b) The governing board transmits to the retirement fund an amount determined by the Teachers' Retirement Board which equals the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and Section 22726 and the amount the member would have received without the service credit. The transfer to the retirement fund shall be made in a manner and time period acceptable to the Teachers' Retirement Board.

(c) The governing board transmits to the retirement fund the administrative costs incurred by the State Teachers' Retirement System in implementing this section, as determined by the Teachers' Retirement Board.

(d) The governing board of the community college district has considered the availability of teachers to fill the positions which would be vacated pursuant to this section.

(e) The community college district has certified to the chancellor, prior to the formal action becoming effective in a community college district, that the net effect of the formal action will result in no costs to the State Teachers' Retirement System or the district.

The amount of service credit shall be two years regardless of credited service, but shall not exceed the elapsed period of time intervening between the date of the member's retirement and the date the member attains normal retirement age as determined by the Teachers' Retirement Board. The community college district shall make the payment with respect to all eligible employees who retired pursuant to this section and Section 22726.

Any employee who qualifies under this section and Section 22726 and subsequently reenters the State Teachers' Retirement System, shall forfeit the service credit acquired under this section and Section 22726.

This section shall not be applicable to any employee otherwise eligible if the employee receives any unemployment insurance payments arising out of employment with an employer subject to Part 13 (commencing with Section 22000) of Title 1 during a period extending one year beyond the effective date of the formal action, or if the employee is not otherwise eligible to retire for service under the State Teachers' Retirement System.

This section shall become inoperative on July 1, 1990, and, as of January 1, 1991, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1991, deletes or extends the

dates on which it becomes inoperative and is repealed.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 602

An act to amend Section 42301.5 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 42301.5 of the Health and Safety Code is amended to read:

42301.5. (a) Except as provided in subdivision (b), any district regulation which requires a reduction in emissions from any article, machine, equipment, or contrivance for which an authority to construct was issued between January 1, 1981, and December 31, 1987, inclusive, shall become effective for that article, machine, equipment, or contrivance five years after issuance of the permit to operate if the regulation was adopted after issuance of the authority to construct and construction has commenced within two years of the date of issuance of the authority to construct or the applicant has, in good faith reliance upon the permit issued, performed substantial work or incurred substantial liability.

(b) The district may require compliance with a regulation prior to completion of the five-year period specified in subdivision (a) if the district or a portion of the district is designated by the state board as a nonattainment area for any national ambient air quality standard and the district determines that earlier compliance is necessary to demonstrate reasonable progress toward attainment and that, on a case-by-case basis, compliance with the regulation will not do any of the following:

(1) Require the abandonment or removal from service of any existing manufacturing or energy-producing equipment.

(2) Specify an emission level or operating standard which would cause a substantial increase in the rate of degradation of energy-producing equipment or would cause a violation or voiding of a manufacturer's warranty for that equipment.

(3) Result in an increase in operating costs in excess of 5 percent per year for the article, machine, equipment, or contrivance for which the authority to construct was originally issued.

(4) Require an increase in capital costs in excess of one hundred thousand dollars ($100,000) or 3 percent of the original capital cost of the article, machine, equipment, or contrivance for which the authority to construct was originally issued, whichever is greater.

(c) Any article, machine, equipment, or contrivance which may emit into the ambient air any toxic air contaminant identified pursuant to Section 39662 shall comply with any regulation adopted by the state board or a district requiring a reduction in emissions of that contaminant or chemical from the article, machine, equipment, or contrivance consistent with a reasonable schedule of compliance, as determined by the state board or the district.

(d) (1) Any article, machine, equipment, or contrivance which is located within a district which is designated by the state board as a nonattainment area for any national ambient air quality standard, and for which an authority to construct is issued on or after January 1, 1988, shall comply with any district regulation which is adopted after December 31, 1982, and which requires a reduction in emissions of any air pollutant, including any precursor of an air pollutant, which interferes with the attainment of the standard, from that article, machine, equipment, or contrivance consistent with a reasonable schedule of compliance, as determined by the district.

(2) In determining a schedule of compliance under this subdivision, the district shall consider the extent to which the proposed schedule will adversely affect the ability of the facility owner or operator to amortize the capital costs of pollution control equipment purchased within the preceding five years.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 and 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 603

An act to add Section 14035.9 to the Government Code, to add Section 6356 to the Penal Code, to amend Section 99317 of, and to add Section 99317.9 to, the Public Utilities Code, and to amend Section 199 of the Streets and Highways Code, relating to transportation.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 14035.9 is added to the Government Code, to read:

14035.9. The department shall in conjunction with the Department of Corrections evaluate the addition of stations or stops on existing bus or rail routes, or the addition of new services, which improve transportation access for visitors to prisons. The department shall give reasonable priority to stations, stops, and routes which serve visitors to prisons, particularly when alternative public transportation is minimal or nonexistent.

Whenever possible, the department and the Department of Corrections shall seek to implement these services in conjunction with the opening of new prison facilities.

The Department of Corrections shall publicize the availability of services provided by the department under this section.

SEC. 2. Section 6356 is added to the Penal Code, to read:

6356. The department shall cooperate with the Department of Transportation in the development of public transportation services to prisons, pursuant to Section 14035.9 of the Government Code and Section 99317.9 of the Public Utilities Code.

SEC. 3. Section 99317 of the Public Utilities Code is amended to read:

99317. (a) Funds made available pursuant to subdivision (c) of Section 99315 shall be appropriated to the department for allocation, as directed by the commission, to fund the following types of transit capital improvement projects:

(1) Abandoned railroad rights-of-way acquisition.

(2) Bus rehabilitation.

(3) Exclusive public mass transit guideways and rolling stock.

(4) Grade separations.

(5) Intermodal transfer stations serving various transportation modes.

(b) Funds made available pursuant to Sections 199 and 199.1 of the Streets and Highways Code shall be appropriated to the department for allocation, as directed by the commission, solely to fund exclusive public mass transit guideways.

SEC. 4. Section 99317.9 is added to the Public Utilities Code, to read:

99317.9. The department and the commission shall give reasonable priority to allocations pursuant to paragraph (5) of subdivision (a) of Section 99317 to station projects which improve access for visitors to state prisons.

SEC. 5. Section 199 of the Streets and Highways Code is amended to read:

199. (a) Upon the approval of a proposition by the voters of an area pursuant to Section 4 of Article XIX of the California Constitution, the entity, including, but not limited to, a transit district, responsible for construction of an exclusive public mass transit guideway project in that area may submit the project to the department for inclusion in its resource allocation recommendations. If the project is located within an area under the jurisdiction of a statutorily created transportation planning agency, a county transportation commission, or the San Diego Metropolitan Transit Development Board, the project shall be approved by that agency, commission, or board, as the case may be, prior to being submitted to the department.

(b) Projects eligible for funding as exclusive public mass transit guideway projects shall include rail lines on which the department contracts for rail passenger service pursuant to Section 14035 of the Government Code, if the voters have approved a proposition pursuant to Section 4 of Article XIX of the California Constitution for the area in which the project is to be located. The department, or a local entity, including, but not limited to, a transit district, may submit the project to the department for inclusion in its resource allocation recommendations. If the project is located within an area under the jurisdiction of a statutorily created transportation planning agency, a county transportation commission, or the San Diego Metropolitan Transit Development Board, the project shall be approved by that agency, commission, or board, as the case may be, prior to being submitted to the department.

(c) The department shall submit its resource allocation recommendations for that project for the comment and review of the transportation planning agency designated in Section 29532 of the Government Code for the area, except that, in the case of a project located within an area under the jurisdiction of a statutorily created transportation planning agency, a county transportation commission, or the San Diego Metropolitan Transit Development Board the project shall be approved by that agency, commission, or board, as the case may be. Each project shall be submitted by the department to the California Transportation Commission for the allocation of funds to the project from those funds appropriated for guideway purposes from the State Highway Account. Allocations shall be made under terms and conditions that the commission deems appropriate, taking into consideration any recommendation of the department and any agency, commission, or board.

(d) The funds set aside pursuant to this section from the State Highway Account shall be deemed expenditures on the highway

system for purposes of Sections 188 and 188.8 and shall be separately identified in the budget report submitted to the Legislature. However, the commission shall make multiyear commitments for programming guideway projects over the five-year period of the state transportation improvement program if the projects require funding in more than one year.

(e) If the department and the commission determine that funding is not available from the Transportation Planning and Development Account in the State Transportation Fund for all eligible transit capital improvements, projects eligible for funding pursuant to Section 4 of Article XIX of the California Constitution shall be so funded.

CHAPTER 604

An act to add Section 2122.5 to the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 2122.5 is added to the Unemployment Insurance Code, to read:

2122.5. Any fine imposed by the court pursuant to this chapter, except for fines imposed under Sections 2101 and 2102, shall be paid to the office of the prosecutor bringing the complaint, but if the case was referred to the prosecutor by the department, or some other governmental unit, one-half of the criminal fine shall be paid to that governmental unit.

CHAPTER 605

An act to amend Sections 12940, 12946, 12980, 12983, and 12986 of, to add Section 12956 to, and to repeal Section 12982 of, the Government Code, relating to discrimination.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 12940 of the Government Code is amended to read:

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based

upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions or privileges of employment.

(1) Nothing in this part shall prohibit an employer from refusing to hire or discharging a physically handicapped employee, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of a physically handicapped employee, where the employee, because of his or her physical handicap, is unable to perform his or her duties, or cannot perform those duties in a manner which would not endanger his or her health or safety or the health and safety of others.

(2) Nothing in this part shall prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her duties, or cannot perform those duties in a manner which would not endanger the employee's health or safety or the health or safety of others. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her duties, or cannot perform those duties in a manner which would not endanger the employee's health or safety or the health or safety of others.

(3) Nothing in this part relating to discrimination on account of marital status shall either (i) affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission, or (ii) prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of any person, to exclude, expel or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of the person in the election of officers of the labor organization or in the

selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of the person discriminated against.

(d) For any employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex, or any intent to make any such limitation, specification or discrimination. Nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(e) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code.

(f) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(h) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, to harass an employee or applicant. Harassment of an employee or applicant by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish

harassment. The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment. For purposes of this subdivision only, "employer" means any person regularly employing one or more persons, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision thereof, and cities. However, "employer" does not include a religious association or corporation not organized for private profit. For other types of discrimination as enumerated in subdivision (a), an employer remains as defined in subdivision (c) of Section 12926. Nothing contained in this subdivision shall be construed to apply the definition of employer found in this subdivision to subdivision (a).

(i) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(j) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties which conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance such as a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

SEC. 3. Section 12946 of the Government Code is amended to read:

12946. It shall be an unlawful practice for employers, labor organizations, and employment agencies subject to the provisions of this part to fail to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received, or for employers to fail to retain personnel files of applicants or terminated employees for a minimum period of two years after the date of the employment action taken. For the purposes of this section, the State Personnel Board is exempt from the two-year retention requirement and shall instead, maintain the records and files for a period of one year. Upon notice that a verified

complaint against it has been filed under this part, any such employer, labor organization, or employment agency shall maintain and preserve any and all records and files until the complaint is fully and finally disposed of and all appeals or related proceedings terminated. The commission shall adopt suitable rules, regulations, and standards to carry out the purposes of this section. Where necessary, the department, pursuant to its powers under Section 12974, may seek temporary or preliminary judicial relief to enforce this section.

SEC. 5. Section 12956 is added to the Government Code, to read:

12956. Upon notice that a verified complaint against it has been filed under this part, any owner of housing accommodations shall maintain and preserve any and all rental records or any other written materials relevant to the complaint, until the complaint is fully and finally disposed of and all appeals or related proceedings terminated.

SEC. 6. Section 12980 of the Government Code is amended to read:

12980. The provisions of this article govern the procedure for the prevention and elimination of discrimination in housing made unlawful pursuant to Article 2 (commencing with Section 12955) of Chapter 6.

(a) Any person claiming to be aggrieved by an alleged violation of Section 12955 may file with the department a verified complaint in writing which shall state the name and address of the person alleged to have committed the violation complained of, and which shall set forth the particulars thereof and contain any other information required by the department.

The filing of a complaint and pursuit of conciliation or remedy under this part shall not prejudice the complainant's right to pursue effective judicial relief under other applicable laws, but if a civil action has been filed under Section 52 of the Civil Code, the department shall terminate proceedings upon notification of the entry of final judgment unless the judgment is a dismissal entered at the complainant's request.

(b) The Attorney General or the director may, in a like manner, make, sign, and file complaints citing practices which appear to violate the purpose of this part or any specific provisions of this part relating to housing discrimination.

No complaint may be filed after the expiration of 60 days from the date upon which the alleged violation occurred. This period may be extended for not to exceed 60 days following the expiration of the initial 60 days, if a person allegedly aggrieved by the violation first obtained knowledge of the facts of the alleged violation after the expiration of the initial 60 days from date of its occurrence.

(c) The department may thereupon proceed upon the complaint in the same manner and with the same powers as provided in this part in the case of an unlawful practice.

(d) If an accusation is not issued within 150 days after the filing of a complaint, or if the department earlier determines that no

accusation will issue, the department shall promptly notify the person claiming to be aggrieved. This notice shall, in any event, be issued no more than 30 days after the date of the determination or 30 days after the date of the expiration of the 150-day period, whichever date first occurs. The notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person named in the verified complaint within one year from the date this notice is mailed. The superior, municipal, and justice courts of the State of California shall have jurisdiction of these actions, and the aggrieved person may file in any of these courts. The action may be brought in any county in the state in which the violation is alleged to have been committed, or in the county in which the records relevant to the alleged violation are maintained and administered, but if the defendant is not found within that county, the action may be brought within the county of defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department and of the commission. The remedy for failure to send a copy of a complaint is an order to do so. In a civil action brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorney fees.

SEC. 7. Section 12982 of the Government Code is repealed.

SEC. 8. Section 12983 of the Government Code is amended to read:

12983. The department, at any time after a complaint is filed with it and it has been determined that probable cause exists for believing that the allegations of the complaint are true and constitute a violation of this part, may bring an action in the superior court to enjoin the owner of the property from taking further action with respect to the rental, lease, or sale of the property, as well as to require compliance with Section 12956, until the department has completed its investigation and made its determination; but a temporary restraining order obtained under this section shall not, in any event, be in effect for more than 20 days. In this action an order or judgment may be entered awarding the temporary restraining order or the preliminary or final injunction in accordance with Section 527 of the Code of Civil Procedure.

SEC. 9. Section 12986 of the Government Code is amended to read:

12986. The department shall within 45 days cause a copy of the verified complaint that has been filed under the provisions of this part to be served upon or mailed to the owner alleged to have committed the violation complained of.

CHAPTER 606

An act to add Sections 31870.01 and 31870.11 to the Government Code, relating to the County Employees Retirement Law of 1937.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 31870.01 is added to the Government Code, to read:

31870.01. (a) The board of retirement shall, before April 1 of each year, determine whether there has been an increase or decrease in the cost-of-living as provided in this section. Notwithstanding Section 31481 or any other provision of this chapter, every retirement allowance, optional death allowance, or annual death allowance payable to or on account of any member, of this system or a superseded system, who retires or dies or who has retired or died shall, as of April 1st of each year, be increased or decreased to the nearest one-tenth of 1 percent, by 40 percent of the annual increase or decrease in the cost-of-living as of January 1st of each year as shown by the then current (year ending December) Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers for the United States City Average, except that no decrease shall reduce the allowance below the amount being received by the member or his or her beneficiary on the effective date of the allowance.

(b) The allowance shall be increased a minimum of 2 percent in any year in which the board's determination of cost-of-living change of allowance would result in less, provided that the member or beneficiary has an accumulated unpaid cost-of-living account sufficient to provide the 2 percent increase.

(c) When this section becomes applicable in a county, the accumulated unpaid cost-of-living account of each retired member or beneficiary under the superseded Section 31870, shall be transferred to a like account under this section. Thereafter, no increases shall be made to such account.

(d) The board of retirement may adopt this section to be effective in lieu of Section 31870, provided, that no increase in unfunded actuarial liability nor in current member or employer contributions to the system are required as a result of the adoption and is so attested by an enrolled actuary. After adoption, the effective date for increases or decreases in allowances pursuant to this section shall be the next succeeding April 1.

(e) This section shall apply only in a county of the first class, as established by Sections 28020 and 28022, as amended by Chapter 1204 of the Statutes of 1971.

SEC. 2. Section 31870.11 is added to the Government Code, to read:

31870.11. (a) The board of retirement shall, before April 1 of each year, determine whether there has been an increase or decrease in the cost-of-living as provided in this section. Notwithstanding Section 31481 or any other provision of this chapter, every retirement allowance, optional death allowance, or annual death allowance payable to or on account of any member, of this system or a superseded system, who retires or dies or who has retired or died shall, as of April 1st of each year, be increased or decreased to the nearest one-tenth of 1 percent, by 60 percent of the annual increase or decrease in the cost-of-living as of January 1st of each year as shown by the then current (year ending December) Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers for the United States City Average, except that no decrease shall reduce the allowance below the amount being received by the member or his or her beneficiary on the effective date of the allowance.

(b) The allowance shall be increased a minimum of 3 percent in any year in which the board's determination of cost-of-living change of allowance would result in less, provided that the member or beneficiary has an accumulated unpaid cost-of-living account sufficient to provide the 3 percent increase.

(c) When this section becomes applicable in a county, the accumulated unpaid cost-of-living account of each retired member or beneficiary under the superseded Section 31870.1, shall be transferred to a like account under this section. Thereafter, no increases shall be made to such account.

(d) The board of retirement may adopt this section to be effective in lieu of Section 31870.1, provided, that no increase in unfunded actuarial liability nor in current member or employer contributions to the system are required as a result of the adoption and is so attested by an enrolled actuary. After adoption, the effective date for increases or decreases in allowances pursuant to this section shall be the next succeeding April 1.

(e) This section shall apply only in a county of the first class, as established by Sections 28020 and 28022, as amended by Chapter 1204 of the Statutes of 1971.

SEC. 3. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 607

An act relating to transportation.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987]

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

SECTION 1. (a) The Department of Transportation shall, upon assurance of sufficient funding pursuant to subdivision (b), undertake a study of the construction and repair of culverts or other improvements it finds to be necessary to address flood water problems on Mission Gorge Road in the City of San Diego and shall transmit a report of its findings and recommendations to the Legislature by July 1, 1988.

(b) The City of San Diego, the County of San Diego, the Department of Transportation, and the adjoining property owners may jointly fund the study. The participation of the department toward the cost thereof shall be limited to a maximum expenditure of five thousand dollars ($5,000).

CHAPTER 608

An act to add Section 14170.5 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 14170.5 is added to the Welfare and Institutions Code, to read:

14170.5. (a) No provider's claims for reimbursement under this chapter shall be subject to any special claims review procedure for a period in excess of nine months unless the department shows cause why the provider's claims for reimbursement should continue to be subject to special claims review procedures.

(b) The department shall provide notice to a provider of its reasons for determining that the provider shall be subject to extended special claims review.

CHAPTER 609

An act to add Section 2613 to the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987]

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

SECTION 1. The Legislature finds and declares that there is a need to inform workers in California of their rights to disability benefits and that the purpose of the law is frustrated if the law is underutilized because of ignorance or other factors. The Legislature also specifically finds and declares that there is a need to inform women workers of their rights to benefits for time lost from work due to childbirth.

SEC. 2. Section 2613 is added to the Unemployment Insurance Code, to read:

2613. The Director of Employment Development shall develop and maintain a program of education concerning disability insurance rights and benefits . The director shall provide to each employer of employees subject to this part a notice informing workers of their disability insurance rights and benefits due to sickness, injury, or pregnancy. The notice shall be given by every employer to each new employee hired on or after July 1, 1988.

CHAPTER 610

An act to amend Section 38240 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 38240 of the Vehicle Code is amended to read:

38240. (a) The Controller shall allocate the fees collected under Section 38230 in July and January of each fiscal year in the same manner as fees are allocated under subdivisions (c) and (d) of Section 11005 of the Revenue and Taxation Code.

(b) The funds collected under Section 38230 may be used for any one or more of the following purposes:

(1) Planning, acquiring, developing, constructing, maintaining, administering, operating, or conserving trails, areas, or other facilities for the use of off-highway motor vehicles.

(2) Controlling the operation of motor vehicles in areas off the highways where the operation of motor vehicles is restricted or prohibited.

(3) Otherwise carrying out the provisions of this division.

(c) Funds received by a county pursuant to this section may be expended for facilities located outside the county's limits if both of the following conditions are met:

(1) The funds are expended for the purposes of acquiring, developing, and constructing trails, areas, or other facilities for the use of off-highway motor vehicles.

(2) The funds are expended pursuant to agreement with the city in which the facility is located or with the county in which the facility is located if the facility is located in an unincorporated territory.

CHAPTER 611

An act to amend Sections 667.5 and 1170.1 of the Penal Code, relating to crimes.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior was one of the violent felonies specified in subdivision (c); provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in subdivision (2) of Section 261.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under 14 as defined in Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5.

(9) Any robbery perpetrated in an inhabited dwelling house or trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for such extraordinary crimes of violence against the person.

(d) For the purposes of this section the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole whichever first occurs including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which if committed in California is punishable by imprisonment in state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration

imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while defendant is temporarily removed from prison pursuant to Section 2690 or while defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 2. 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 these convictions shall be the sum of the principal term, the subordinate term and any additional term imposed pursuant to Section 667.5, 667.6, or 12022.1. 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, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, or 12022.9. 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) or (9) 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, 12022.4, 12022.5, 12022.7, or 12022.9.

(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, 12022.4, 12022.5, 12022.7, or 12022.9. 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 the 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 the convictions which the 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, 12022.4, 12022.5, 12022.6, 12022.7, and 12022.9, 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, 12022.4, 12022.5, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or

burglary, or attempted penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667.5, 667.6, 12022, 12022.1, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, and 12022.9 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, 12022.4, 12022.5, 12022.6, 12022.7, or 12022.9 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, 12022.4, 12022.5, 12022.6, 12022.7, and 12022.9 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, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person 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.

CHAPTER 612

An act to add Section 13517.5 to the Penal Code, relating to criminal procedure.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 13517.5 is added to the Penal Code, to read:

13517.5. The commission shall prepare guidelines establishing standard procedures which may be followed by police agencies and prosecutors in interviewing minor witnesses.

CHAPTER 613

An act to add and repeal Sections 18838, 18839, 26255, and 26256 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 18838 is added to the Revenue and Taxation Code, to read:

18838. (a) The Franchise Tax Board may enter into agreement with one or more persons for the purpose of collecting delinquent accounts with respect to amounts assessed or imposed under this part, provided the agreements do not cause the net displacement of civil service employees. The agreement may provide for the rate and manner of payment for the contracted collection services. However, the consideration payable by the Franchise Tax Board under the agreement shall not be included in the amounts to be collected from the tax debtor by the contractor providing collection services.

(b) For purposes of this section, "displacement" includes layoff, demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change of residence, and time base reductions. "Displacement" does not include changes in shifts or days off, nor does it include reassignment to any other position within the same class and general location.

(c) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered before that date, deletes or extends the date.

SEC. 2. Section 18839 is added to the Revenue and Taxation Code, to read:

18839. (a) The Franchise Tax Board shall determine the total amount collected under Section 18838, and shall notify the Controller of the amount to be transferred to the Delinquent Tax Collection Fund, which is hereby created. In addition, the Franchise Tax Board shall determine the amount of each of the following:

(1) The costs of implementing and administering Section 18838.

(2) The contracting costs incurred under Section 18838.

The Franchise Tax Board shall notify the Controller of these amounts.

(b) The Controller shall transfer these amounts from the Delinquent Tax Collection Fund to the Franchise Tax Board for reimbursement of its implementation and administrative costs and for the contracting costs. The moneys remaining in the Delinquent

Tax Collection Fund after disbursements shall be transferred to the Personal Income Tax Fund by the Controller upon notification by the Franchise Tax Board. Notwithstanding Section 13340 of the Government Code, the moneys transferred pursuant to this section are hereby continuously appropriated, without regard to fiscal years.

(c) The funds generated through this section shall not be used in place of funds from other sources which are available for appropriation to the Franchise Tax Board.

(d) This section shall remain in effect only until January 1, 1992, 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 26255 is added to the Revenue and Taxation Code, to read:

26255. (a) The Franchise Tax Board may enter into agreement with one or more persons for the purpose of collecting delinquent accounts with respect to amounts assessed or imposed under this part, provided the agreements do not cause the net displacement of civil service employees. The agreements may provide for the rate and manner of payment for the contracted collection services. However, the consideration payable by the Franchise Tax Board under the agreement shall not be included in the amounts to be collected from the tax debtor by the contractor providing collection services.

(b) For purposes of this section, "displacement" includes layoff, demotion, involuntary transfer to a new class, involutary transfer to a new location requiring a change of residence, and time base reductions. "Displacement" does not include changes in shifts or days off, nor does it include reassignment to any other position within the same class and general location.

(c) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered before that date, deletes or extends the date.

SEC. 4. Section 26256 is added to the Revenue and Taxation Code, to read:

26256. (a) The Franchise Tax Board shall determine the total amount collected under Section 26255, and shall notify the Controller of the amount to be transferred to the Delinquent Tax Collection Fund, which is created pursuant to Section 18839. In addition, the Franchise Tax Board shall determine the amount of each of the following:

(1) The costs of implementing and administering Section 26255.

(2) The contracting costs incurred under Section 26255.

The Franchise Tax Board shall notify the Controller of these amounts.

(b) The Controller shall transfer these amounts from the Delinquent Tax Collection Fund to the Franchise Tax Board for reimbursement of its implementation and administrative costs and for the contracting costs. The moneys remaining in the Delinquent Tax Collection Fund after disbursements shall be transferred to the

Bank and Corporation Tax Fund by the Controller upon notification by the Franchise Tax Board. Notwithstanding Section 13340 of the Government Code, the moneys transferred pursuant to this section are hereby continuously appropriated, without regard to fiscal years.

(c) The funds generated through this section shall not be used in place of funds from other sources which are available for appropriation to the Franchise Tax Board.

(d) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered before that date, deletes or extends the date.

SEC. 5. The Franchise Tax Board shall prepare and submit a report to the Legislature no later than July 1, 1990, on the implementation of this act.

CHAPTER 614

An act to amend Sections 779.1, 10010.1, 12823.1, and 16482.1 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 779.1 of the Public Utilities Code is amended to read:

779.1. (a) Every electrical, gas, heat, or water corporation shall allow every residential customer at least 19 days from the date of mailing its bill for services, postage prepaid, for payment of the charges demanded. No corporation subject to this section may terminate residential service for nonpayment of a delinquent account unless the corporation first gives notice of the delinquency and impending termination, at least 10 days prior to the proposed termination, by means of a notice mailed, postage prepaid, to the customer to whom the service is billed, not earlier than 19 days from the date of mailing the corporation's bill for services, and the 10-day period shall not commence until five days after the mailing of the notice.

(b) Every corporation shall make a reasonable attempt to contact an adult person residing at the premises of the customer by telephone or personal contact at least 24 hours prior to any termination of service, except that, whenever telephone or personal contact cannot be accomplished, the corporation shall give, either by mail or in person, a notice of termination of service at least 48 hours prior to termination.

(c) Every corporation shall make available to its residential customers who are 65 years of age or older, or who are dependent adults as defined in paragraph (1) of subdivision (b) of Section 15610

of the Welfare and Institutions Code, a third-party notification service, whereby the corporation will attempt to notify a person designated by the customer to receive notification when the customer's account is past due and subject to termination. The notification shall include information on what is required to prevent termination of service. The residential customer shall make a request for third-party notification on a form provided by the corporation, and shall include the written consent of the designated third party. The third-party notification does not obligate the third party to pay the overdue charges, nor shall it prevent or delay termination of service.

(d) Every notice of termination of service pursuant to subdivision (a) or (b) shall include all of the following information:

(1) The name and address of the customer whose account is delinquent.

(2) The amount of the delinquency.

(3) The date by which payment or arrangements for payment is required in order to avoid termination.

(4) The procedure by which the customer may initiate a complaint or request an investigation concerning service or charges.

(5) The procedure by which the customer may request amortization of the unpaid charges.

(6) The procedure for the customer to obtain information on the availability of financial assistance, including private, local, state, or federal sources, if applicable.

(7) The telephone number of a representative of the corporation who can provide additional information or institute arrangements for payment.

(8) The telephone number of the commission to which inquiries by the customer may be directed.

All written notices shall be in a clear and legible format.

(e) Any residential customer whose complaint or request for an investigation has resulted in an adverse determination by the corporation may appeal the determination to the commission. Any subsequent appeal of the dispute or complaint to the commission is not subject to this section.

(f) If a residential customer fails to comply with an amortization agreement, the corporation shall not terminate service without giving notice to the customer at least 48 hours prior to termination of the conditions the customer is required to meet to avoid termination, but this notice does not entitle the customer to further investigation by the corporation.

(g) No termination of service may be effected without compliance with this section. Any service wrongfully terminated shall be restored without charge for the restoration of service, and a notation thereof shall be mailed to the customer at his or her billing address.

SEC. 2. Section 10010.1 of the Public Utilities Code is amended to read:

10010.1. (a) No public utility furnishing light, heat, water, or power may terminate residential service on account of nonpayment of a delinquent account unless the public utility first gives notice of the delinquency and impending termination, at least 10 days prior to the proposed termination, by means of a notice mailed, postage prepaid, to the customer to whom the service is billed, not earlier than 19 days from the date of mailing the public utility's bill for services, and the 10-day period shall not commence until five days after the mailing of the notice.

(b) Every public utility shall make a reasonable attempt to contact an adult person residing at the premises of the customer by telephone or personal contact, at least 24 hours prior to any termination of service, except that, whenever telephone or personal contact cannot be accomplished, the public utility shall give, by mail, in person, or by posting in a conspicuous location at the premises, a notice of termination of service, at least 48 hours prior to termination.

(c) Every public utility shall make available to its residential customers who are 65 years of age or older, or who are dependent adults as defined in paragraph (1) of subdivision (b) of Section 15610 of the Welfare and Institutions Code, a third-party notification service, whereby the public utility will attempt to notify a person designated by the customer to receive notification when the customer's account is past due and subject to termination. The notification shall include information on what is required to prevent termination of service. The residential customer shall make a request for third-party notification on a form provided by the public utility, and shall include the written consent of the designated third party. The third-party notification does not obligate the third party to pay the overdue charges, nor shall it prevent or delay termination of service.

(d) Every notice of termination of service pursuant to subdivision (a) shall include all of the following information:

(1) The name and address of the customer whose account is delinquent.

(2) The amount of the delinquency.

(3) The date by which payment or arrangements for payment is required in order to avoid termination.

(4) The procedure by which the customer may initiate a complaint or request an investigation concerning service or charges, except that, if the bill for service contains a description of that procedure, the notice pursuant to subdivision (a) is not required to contain that information.

(5) The procedure by which the customer may request amortization of the unpaid charges.

(6) The procedure for the customer to obtain information on the availability of financial assistance, including private, local, state, or federal sources, if applicable.

(7) The telephone number of a representative of the public utility who can provide additional information or institute arrangements

for payment.

Every notice of termination of service pursuant to subdivision (b) shall include the items of information in paragraphs (1), (2), (3), (6), and (7).

All written notices shall be in a clear and legible format.

(e) If a residential customer fails to comply with an amortization agreement, the public utility shall not terminate service without giving notice to the customer at least 48 hours prior to termination of the conditions the customer is required to meet to avoid termination, but the notice does not entitle the customer to further investigation by the public utility.

(f) No termination of service may be effected without compliance with this section. Any service wrongfully terminated shall be restored without charge for the restoration of service, and a notation thereof shall be mailed to the customer at his or her billing address.

SEC. 3. Section 12823.1 of the Public Utilities Code is amended to read:

12823.1. (a) No district furnishing light, heat, water, or power may terminate residential service on account of nonpayment of a delinquent account unless the district first gives notice of the delinquency and impending termination, at least 10 days prior to the proposed termination, by means of a notice mailed, postage prepaid, to the customer to whom the service is billed not earlier than 19 days from the date of mailing the district's bill for services, and the 10-day period shall not commence until five days after the mailing of the notice.

(b) Every district shall make a reasonable attempt to contact an adult person residing at the premises of the customer by telephone or personal contact, at least 24 hours prior to any termination of service, except that, whenever telephone or personal contact cannot be accomplished, the district shall give, by mail, in person, or by posting in a conspicuous location at the premises, a notice of termination of service, at least 48 hours prior to termination.

(c) Every district shall make available to its residential customers who are 65 years of age or older, or who are dependent adults as defined in paragraph (1) of subdivision (b) of Section 15610 of the Welfare and Institutions Code, a third-party notification service, whereby the district will attempt to notify a person designated by the customer to receive notification when the customer's account is past due and subject to termination. The notification shall include information on what is required to prevent termination of service. The residential customer shall make a request for third-party notification on a form provided by the district, and shall include the written consent of the designated third party. The third-party notification does not obligate the third party to pay the overdue charges, nor shall it prevent or delay termination of service.

(d) Every notice of termination of service pursuant to subdivision (a) shall include all of the following information:

(1) The name and address of the customer whose account is

delinquent.

(2) The amount of the delinquency.

(3) The date by which payment or arrangements for payment is required in order to avoid termination.

(4) The procedure by which the customer may initiate a complaint or request an investigation concerning service or charges, except that, if the bill for service contains a description of that procedure, the notice pursuant to subdivision (a) is not required to contain that information.

(5) The procedure by which the customer may request amortization of the unpaid charges.

(6) The procedure for the customer to obtain information on the availability of financial assistance, including private, local, state, or federal sources, if applicable.

(7) The telephone number of a representative of the district who can provide additional information or institute arrangements for payment.

Every notice of termination of service pursuant to subdivision (b) shall include the items of information in paragraphs (1), (2), (3), (6), and (7).

All written notices shall be in a clear and legible format.

(e) If a residential customer fails to comply with an amortization agreement, the district shall not terminate service without giving notice to the customer at least 48 hours prior to termination of the conditions the customer is required to meet to avoid termination, but the notice does not entitle the customer to further investigation by the district.

(f) No termination of service may be effected without compliance with this section. Any service wrongfully terminated shall be restored without charge for the restoration of service, and a notation thereof shall be mailed to the customer at his or her billing address.

SEC. 4. Section 16482.1 of the Public Utilities Code is amended to read:

16482.1. (a) No district furnishing light, heat, water, or power, or means for the disposition of garbage, sewage, or refuse matter, may terminate residential service on account of nonpayment of a delinquent account unless the district first gives notice of the delinquency and impending termination, at least 10 days prior to the proposed termination, by means of a notice mailed, postage prepaid, to the customer to whom the service is billed, not earlier than 19 days from the date of mailing the district's bill for services, and the 10-day period shall not commence until five days after the mailing of the notice.

(b) Every district shall make a reasonable, good faith effort to contact an adult person residing at the premises of the customer by telephone or personal contact, at least 48 hours prior to any termination of service, except that, whenever telephone or personal contact cannot be accomplished, the district shall give, by mail, in person, or by posting in a conspicuous location at the premises, a

notice of termination of service, at least 48 hours prior to termination.

(c) Every district shall make available to its residential customers who are 65 years of age or older, or who are dependent adults as defined in paragraph (1) of subdivision (b) of Section 15610 of the Welfare and Institutions Code, a third-party notification service, whereby the district will attempt to notify a person designated by the customer to receive notification when the customer's account is past due and subject to termination. The notification shall include information on what is required to prevent termination of service. The residential customer shall make a request for third-party notification on a form provided by the district, and shall include the written consent of the designated third party. The third-party notification does not obligate the third party to pay the overdue charges, nor shall it prevent or delay termination of service.

(d) Every notice of termination of service pursuant to subdivision (a) shall include all of the following information:

(1) The name and address of the customer whose account is delinquent.

(2) The amount of the delinquency.

(3) The date by which payment or arrangements for payment is required in order to avoid termination.

(4) The procedure by which the customer may initiate a complaint or request an investigation concerning service or charges, except that, if the bill for service contains a description of that procedure, the notice pursuant to subdivision (a) is not required to contain that information.

(5) The procedure by which the customer may request amortization of the unpaid charges.

(6) The procedure for the customer to obtain information on the availability of financial assistance, including private, local, state, or federal sources, if applicable.

(7) The telephone number of a representative of the district who can provide additional information or institute arrangements for payment.

Every notice of termination of service pursuant to subdivision (b) shall include the items of information in paragraphs (1), (2), (3), (6), and (7).

All written notices shall be in a clear and legible format.

(e) If a residential customer fails to comply with an amortization agreement, the district shall not terminate service without giving notice to the customer at least 48 hours prior to termination of the conditions the customer is required to meet to avoid termination, but this notice does not entitle the customer to further investigation by the district.

(f) No termination of service may be effected without compliance with this section. Any service wrongfully terminated shall be restored without charge for the restoration of the service, and a notation thereof shall be mailed to the customer at his or her billing address.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 615

An act to add Section 24045.11 to the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 24045.11 is added to the Business and Professions Code, to read:

24045.11. The department may issue a special on-sale wine license to an establishment licensed to do business as a bed and breakfast inn.

"Bed and breakfast inn," as used in this section, means an establishment of 20 guestrooms or less, which provides overnight transient occupancy accommodations, which serves food only to its registered guests, which serves only a breakfast or similar early morning meal, and with respect to which the price of the food is included in the price of the overnight transient occupancy accommodation. For purposes of this section, "bed and breakfast inn" refers to an establishment as to which the predominant relationship between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of some other legal relationships as between some occupants and the owner or operator is immaterial.

An establishment holding a license under this section is authorized to serve wine purchased from a licensed winegrower or wine wholesaler only to registered guests of the establishment. Wine shall not be given away to guests but the price of the wine shall be included in the price of the overnight transient occupancy accommodation. Guests shall not be permitted to remove wine served in the establishment from the grounds.

The applicant for a license shall accompany the application with an original fee of fifty dollars ($50) and shall pay an annual renewal fee of five dollars ($5) for each guestroom in the establishment.

CHAPTER 616

An act to amend Section 35701 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 35701 of the Vehicle Code is amended to read:

35701. (a) Any city, or county for a residence district, may, by ordinance, prohibit the use of a street by any commercial vehicle or by any vehicle exceeding a maximum gross weight limit, except with respect to any vehicle which is subject to Sections 1031 to 1036, inclusive, of the Public Utilities Code, and except with respect to vehicles used for the collection and transportation of garbage, rubbish, or refuse using traditionally used routes in San Diego County when the solid waste management plan prepared under Section 66780.1 of the Government Code is amended to designate each traditionally used route used for the purpose of transporting garbage, rubbish, or refuse which intersects with a local or regional arterial circulation route contained within a city or county's traffic circulation element and which provides access to a solid waste disposal site.

(b) The ordinance shall not be effective until appropriate signs are erected indicating either the streets affected by the ordinance or the streets not affected, as the local authority determines will best serve to give notice of the ordinance.

(c) No ordinance adopted pursuant to this section after November 10, 1969, shall apply to any state highway which is included in the National System of Interstate and Defense Highways, except an ordinance which has been approved by a two-thirds vote of the California Transportation Commission.

(d) The solid waste management plan prepared under Section 66780.1 of the Government Code by San Diego County may designate the traditionally used routes.

(e) "Traditionally used route," for purposes of this section, means any street used for a period of one year or more as access to or from a solid waste disposal site.

SEC. 2. The Legislature hereby finds that due to the geographic siting of solid waste disposal facilities in the County of San Diego in relation to the cities in that county, certain problems relating to transportation of that waste have developed which are unique to that county. The Legislature finds that at this time these problems are not general or statewide. Thus, a general law for purposes of Section 16 of Article IV of the California Constitution cannot be made applicable, and the amendments to Section 35701 of the Vehicle

Code made by Section 1 of this act are only applicable to the County of San Diego.

CHAPTER 617

An act to add Chapter 5 (commencing with Section 4090) to Part 1 of Division 4 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Chapter 5 (commencing with Section 4090) is added to Part 1 of Division 4 of the Welfare and Institutions Code, to read:

CHAPTER 5. MENTAL HEALTH DELIVERY SYSTEM DEMONSTRATION PROJECT

4090. The department shall, as a mental health delivery system demonstration project, establish and fund two model programs, administered by two local county mental health systems agreeing to participate under this chapter for a period not to exceed three years. One program shall be developed in a rural area and the other in an urban area. The demonstration projects shall be administered by the department in collaboration with the Department of Aging.

4091. The model programs shall do both of the following:

(a) Demonstrate the efficacy of a comprehensive, integrated, and coordinated mental health delivery system for older persons and functionally impaired adults in reducing inappropriate hospitalizations and in increasing the number of seniors served in the county's mental health program, and the extent of the reductions and increases. As used in this section, "functionally impaired adults" means those adults who are functionally impaired based upon criteria established under Chapter 4.7 (commencing with Section 9390) of Division 8.5, as a result of mental disorder or brain impairment.

(b) Establish a continuum of mental health services by integrating and coordinating with all other community programs for seniors and functionally impaired adults.

4092. In addition to traditional mental health care, which includes inpatient and outpatient services, the continuum of care model projects shall include, but not be limited to, all of the following:

(a) An assessment and treatment team.

(b) A peer counseling program.

(c) Consultation.
(d) Outreach and education.
(e) Case management.

The demonstration projects shall serve as replicable models for implementation throughout the state.

4093. The department shall establish an advisory committee to advise the department on the demonstration project under this chapter. The advisory committee shall include all members of the Mental Health Task Force of the California Commission on Aging.

4094. The department shall seek and accept federal research and development, and any other private funds that may be available for the purposes of this chapter. The implementation and continuation of this program shall be contingent upon the availability of these funds, unless there are counties willing to participate on a demonstration basis without additional funds.

4095. The department shall prepare an evaluation report with the advice and recommendations of the advisory committee, which shall include all of the following:

(a) A description of problems encountered in implementation and coordination.
(b) A plan for establishing new programs.
(c) Cost projects for duplication.

The final report shall be submitted to the Legislature.

CHAPTER 618

An act to amend Sections 8855.5 and 8855.8 of the Government Code, and to add Section 52045 to the Health and Safety Code, relating to housing.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 8855.5 of the Government Code is amended to read:

8855.5. (a) Any redevelopment agency which issues revenue bonds to finance residential construction pursuant to Chapter 8 (commencing with Section 33750) of Part 1 of Division 24 of the Health and Safety Code, any housing authority which issues revenue bonds to finance housing developments or residential structures pursuant to the Housing Authorities Law, Chapter 1 (commencing with Section 34200) of Part 2 of Division 24 of the Health and Safety Code, any local agency which issues bonds to finance residential rehabilitation pursuant to the Marks-Foran Residential Rehabilitation Act of 1973 (Part 13 (commencing with Section 37910), Division 24, Health and Safety Code), and any city or county

which issues bonds for purposes of a home financing program carried on pursuant to Chapter 1 (commencing with Section 52000) to Chapter 6 (commencing with Section 52060), inclusive, of Part 5 of Division 31 of the Health and Safety Code or for purposes of financing the construction or development of multifamily rental housing pursuant to Chapter 7 (commencing with Section 52075) of Part 5 of Division 31 of the Health and Safety Code, shall report to the California Debt Advisory Commission the incomes, family size, and rents or mortgage payments of the occupants; the number, size, cost, sales price, and geographical distribution of the units developed; the length of time the units are required to be held for occupancy by targeted income groups, and, if applicable, the number of years the units are required to be held as rentals; and the distribution of housing developments among for-profit, limited dividend, and nonprofit sponsors. For the purposes of this section, "nonprofit sponsors" includes public agencies.

(b) The information required to be reported by subdivision (a) shall be reported at least annually during the time that a percentage of the units are required to be occupied by, or made available to, persons or families within a particular income group.

(c) The failure of any entity to report the information required by subdivision (a) shall not affect the validity of the issuance of any of the bonds issued under the authority of any of the provisions described in subdivision (a).

(d) The report required by subdivision (a) shall only apply to housing units financed with the proceeds of bonds that are authorized to be issued, and which are issued, on and after January 1, 1985, pursuant to any of the provisions described in subdivision (a). For purposes of this section, "bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued under the authority of any of the provisions described in subdivision (a).

The redevelopment agency, housing authority, local agency, or city and county may charge a fee to the recipient of agency financing not to exceed the cost of making the reports required by this section.

SEC. 2. Section 8855.8 of the Government Code is amended to read:

8855.8. The commission shall compile and summarize the information reported to the commission pursuant to Section 8855.5 and issue that summary to the Legislature and the Legislative Analyst on or before October 1, 1985, and each year thereafter that the information is received by the commission. This summary shall also list any redevelopment agency, housing authority, local agency, city, and county which issued bonds under the authority of any of the programs specified in subdivision (a) of Section 8855.5 without first obtaining a certification from the Treasurer required pursuant to Section 33760, 34312.3, 52097.5, or 52045 of the Health and Safety Code.

SEC. 3. Section 52045 is added to the Health and Safety Code, to read:

52045. No city, county, or city and county may issue any bonds until any information required to be filed pursuant to Section 8855.5 of the Government Code has been filed with the California Debt Advisory Commission and the Treasurer certifies to the Legislature that the city, county, or city and county has filed that information.

SEC. 4. The amendments to Section 8855.5 of the Government Code made by Section 1 of this act do not constitute a change in, but are declaratory of, the existing law.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 619

An act to add Section 18031.7 to the Health and Safety Code, relating to housing.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 18031.7 is added to the Health and Safety Code, to read:

18031.7. (a) Nothing in this part shall prohibit the replacement of water heaters in manufactured homes or mobilehomes with fuel gas burning water heaters not specifically listed for use in a manufactured home or mobilehome or from having hot water supplied from an approved source within the manufactured home or mobilehome, or in the garage, in accordance with this part or Part 2.1 (commencing with Section 18200).

(b) Replacement fuel gas burning water heaters shall be listed for residential use and installed within the specifications of that listing to include tiedown or bracing to prevent overturning.

(c) Replacement fuel gas burning water heaters installed in accordance with subdivision (b) shall bear a label permanently affixed in a visible location adjacent to the fuel gas inlet which reads, as applicable:

WARNING
This appliance is approved only for use with natural gas (NG).

OR

WARNING
This appliance is approved only for use with liquified petroleum gas (LPG).

Lettering on the label shall be black on a red background and not less than ¼ inch in height except for the word "WARNING" which shall be not less than ½ inch in height.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 620

An act to amend Section 341 of the Health and Safety Code, relating to health, and making an appropriation therefor.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 341 of the Health and Safety Code, as amended by Chapter 1155 of the Statutes of 1979, is amended to read:

341. The State Director of Health Services shall establish and administer a program for the medical care of persons with genetically handicapping conditions, including cystic fibrosis, hemophilia, sickle cell disease, Huntington's disease, Friedreich's Ataxia, Joseph's disease, and Von Hippel-Landau syndrome.

The program shall also provide access to social support services, which may help ameliorate the physical, psychological, and economic problems attendant to genetically handicapping conditions, in order that the genetically handicapped person may function at an optimal level commensurate with the degree of impairment.

The medical and social support services may be obtained through physicians and surgeons, genetically handicapped person's program specialized centers, and other providers that qualify pursuant to the regulations of the department to provide the services. "Medical care," as used in this section, is limited to noncustodial medical and

support services.

The director, with the guidance of the Advisory Committee on Genetically Handicapped Person's Program, may, by regulation, expand the list of genetically handicapping conditions covered under this article. The director shall adopt rules and regulations which are necessary for the implementation of this article. The director, with the approval of the advisory committee, shall establish priorities for the use of funds and provision of services under this article.

SEC. 2. The sum of thirty-seven thousand five hundred dollars ($37,500) is appropriated from the General Fund to the State Department of Health Services for purposes of funding the provisions of this act for the remainder of the 1987–88 fiscal year.

CHAPTER 621

An act to add Section 51263 to the Education Code, to amend Sections 11372.7 and 11802 of the Health and Safety Code, to amend Section 23196 of the Vehicle Code, and to amend Section 2 of Chapter 1118 of the Statutes of 1986, relating to alcohol and drug abuse education.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987]

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

SECTION 1. In order to facilitate a continuing partnership among education and drug agencies, the Legislature finds and declares that it is necessary that the fiscal and management responsibilities of the drug education instruction be shared equitably by education and drug agencies at the county level, and that this cooperation is a major tool in efforts to educate pupils about the effects of the use of tobacco, alcohol, narcotics, dangerous drugs, and dangerous substances and thus, to prevent drug abuse successfully.

It is the intent of the Legislature that drug and alcohol abuse prevention programs emphasize a continuing partnership among education agencies, drug abuse agencies, community service agencies, parents, and other members of the community.

SEC. 2. The Legislature hereby encourages rural counties to engage in consortium arrangements for alcohol and drug abuse prevention education programs. School districts and county offices of education are encouraged to avoid duplication of effort by sharing resources, adapting or adopting model programs, developing joint and collaborative programs, and coordinating efforts with existing state programs, county drug and alcohol programs, county health departments, and other public and private agencies providing health, drug, alcohol, or other related services to youth and their families at the local level.

SEC. 3. Section 51263 is added to the Education Code, to read:

51263. The State Department of Education shall make available information on model drug and alcohol abuse prevention education programs developed and funded pursuant to Article 2 (commencing with Section 32270) of Chapter 2.5 of this code, Article 2 (commencing with Section 11965) of Chapter 2 of Part 3 of Division 10.5 of the Health and Safety Code, Chapter 7 (commencing with Section 13860) of Title 6 of Part 4 of the Penal Code, and other public and private sources.

SEC. 4. Section 11372.7 of the Health and Safety Code is amended to read:

11372.7. (a) Except as otherwise provided in subdivision (b) or (e), each person who is convicted of a violation of this chapter shall pay a drug program fee in an amount not to exceed one hundred dollars ($100) for each separate offense. The court shall increase the total fine, if necessary, to include this increment, which shall be in addition to any other penalty prescribed by law.

(b) The court shall determine whether or not the person who is convicted of a violation of this chapter has the ability to pay a drug program fee. If the court determines that the person has the ability to pay, the court may set the amount to be paid and order the person to pay that sum to the county in a manner that the court believes is reasonable and compatible with the person's financial ability. In its determination of whether a person has the ability to pay, the court shall take into account the amount of any fine imposed upon that person and any amount that person has been ordered to pay in restitution. If the court determines that the person does not have the ability to pay a drug program fee, the person shall not be required to pay a drug program fee.

(c) The county treasurer shall maintain a drug program fund. For every drug program fee assessed and collected pursuant to subdivisions (a) and (b), an amount equal to this assessment shall be deposited into the fund for every conviction pursuant to this chapter, in addition to fines, forfeitures, and other moneys which are transmitted by the courts to the county treasurer pursuant to Sections 11372.5 and 11502. These deposits shall be made prior to any transfer pursuant to Section 11502. Amounts deposited in the drug program fund shall be allocated by the administrator of the county's drug program to drug abuse programs in the schools and the community, subject to the approval of the board of supervisors, as follows:

(1) The moneys in the fund shall be allocated through the planning process established pursuant to Sections 11983, 11983.1, 11983.2, and 11983.3.

(2) A minimum of 33 percent of the fund shall be allocated to primary prevention programs in the schools and the community. Primary prevention programs developed and implemented under this article shall emphasize cooperation in planning and program implementation among schools and community drug abuse agencies,

and shall demonstrate coordination through an interagency agreement among county offices of education, school districts, and the county drug program administrator. These primary prevention programs may include:

(A) School- and classroom-oriented programs, including, but not limited to, programs designed to encourage sound decisionmaking, an awareness of values, an awareness of drugs and their effects, enhanced self-esteem, social and practical skills that will assist students toward maturity, enhanced or improved school climate and relationships among all school personnel and students, and furtherance of cooperative efforts of school- and community-based personnel.

(B) School- or community-based nonclassroom alternative programs, or both, including, but not limited to, positive peer group programs, programs involving youth and adults in constructive activities designed as alternatives to drug use, and programs for special target groups, such as women, ethnic minorities, and other high-risk, high-need populations.

(C) Family-oriented programs, including, but not limited to, programs aimed at improving family relationships and involving parents constructively in the education and nurturing of their children, as well as in specific activities aimed at preventing drug abuse.

(d) Moneys deposited into a county drug program fund pursuant to this section shall supplement, and shall not supplant, any local funds made available to support the county's drug abuse prevention and treatment efforts.

(e) Five percent of the money allocated to primary prevention programs in schools and communities within the county pursuant to paragraph (2) of subdivision (c) shall be used for the purpose of conducting an annual evaluation. The annual evaluation shall be conducted by the office of the county superintendent of schools in counties where the program is operating in a single county or in the office of the county superintendent of schools in the county designated as the lead county in counties where the program is operating as a consortium of counties. The evaluation shall contain the following:

(1) A needs assessment evaluation which provides specific data regarding the problem to be resolved.

(2) A written report of the planning process outlining the deliberations, considerations, and conclusions following a review of the needs assessment.

(3) An end of fiscal year accountability evaluation that will indicate the program's continuing ability to reach appropriate program beneficiaries, deliver the appropriate benefits, and use funds appropriately.

(4) An impact evaluation charged with the task of assessing the effectiveness of the program. Guidelines for the evaluation report format and the timeliness for the submission of the report shall be

developed by the State Department of Education. Each county shall submit an evaluation report annually to the State Department of Education and the State Department of Education shall write and submit a report to the Legislature and Governor.

(f) This section shall not apply to any person convicted of a violation of subdivision (b) of Section 11357 of the Health and Safety Code.

SEC. 4.5. Section 11372.7 of the Health and Safety Code, as amended in Section 1 of Senate Bill No. 639, is amended to read:

11372.7. (a) Except as otherwise provided in subdivision (b) or (e), each person who is convicted of a violation of this chapter shall pay a drug program fee in an amount not to exceed one hundred dollars ($100) for each separate offense. The court shall increase the total fine, if necessary, to include this increment, which shall be in addition to any other penalty prescribed by law.

(b) The court shall determine whether or not the person who is convicted of a violation of this chapter has the ability to pay a drug program fee. If the court determines that the person has the ability to pay, the court may set the amount to be paid and order the person to pay that sum to the county in a manner that the court believes is reasonable and compatible with the person's financial ability. In its determination of whether a person has the ability to pay, the court shall take into account the amount of any fine imposed upon that person and any amount that person has been ordered to pay in restitution. If the court determines that the person does not have the ability to pay a drug program fee, the person shall not be required to pay a drug program fee.

(c) The county treasurer shall maintain a drug program fund. For every drug program fee assessed and collected pursuant to subdivisions (a) and (b), an amount equal to this assessment shall be deposited into the fund for every conviction pursuant to this chapter, in addition to fines, forfeitures, and other moneys which are transmitted by the courts to the county treasurer pursuant to Sections 11372.5 and 11502. These deposits shall be made prior to any transfer pursuant to Section 11502. Amounts deposited in the drug program fund shall be allocated by the administrator of the county's drug program to drug abuse programs in the schools and the community, subject to the approval of the board of supervisors, as follows:

(1) The moneys in the fund shall be allocated through the planning process established pursuant to Sections 11983, 11983.1, 11983.2, and 11983.3.

(2) A minimum of 33 percent of the fund shall be allocated to primary prevention programs in the schools and the community. Primary prevention programs developed and implemented under this article shall emphasize cooperation in planning and program implementation among schools and community drug abuse agencies, and shall demonstrate coordination through an interagency agreement among county offices of education, school district, and

the county drug program administrator. These primary prevention programs may include:

(A) School- and classroom-oriented programs, including, but not limited to, programs designed to encourage sound decisionmaking, an awareness of values, an awareness of drugs and their effects, enhanced self-esteem, social and practical skills that will assist students toward maturity, enhanced or improved school climate and relationships among all school personnel and students, and furtherance of cooperative efforts of school- and community-based personnel.

(B) School- or community-based nonclassroom alternative programs, or both, including, but not limited to, positive peer group programs, programs involving youth and adults in constructive activities designed as alternatives to drug use, and programs for special target groups, such as women, ethnic minorities, and other high-risk, high-need populations.

(C) Family-oriented programs, including, but not limited to, programs aimed at improving family relationships and involving parents constructively in the education and nurturing of their children, as well as in specific activities aimed at preventing drug abuse.

(d) Moneys deposited into a county drug program fund pursuant to this section shall supplement, and shall not supplant, any local funds made available to support the county's drug abuse prevention and treatment efforts.

(e) Five percent of the money allocated to primary prevention programs in schools and communities within the county pursuant to paragraph (2) of subdivision (c) shall be used for the purpose of conducting an annual evaluation. The annual evaluation shall be conducted by the office of the county superintendent of schools in counties where the program is operating in a single county or in the office of the county superintendent of schools in the county designated as the lead county in counties where the program is operating as a consortium of counties. The evaluation shall contain the following:

(1) A needs assessment evaluation which provides specific data regarding the problem to be resolved.

(2) A written report of the planning process outlining the deliberations, considerations, and conclusions following a review of the needs assessment.

(3) An end of fiscal year accountability evaluation that will indicate the program's continuing ability to reach appropriate program beneficiaries, deliver the appropriate benefits, and use funds appropriately.

(4) An impact evaluation charged with the task of assessing the effectiveness of the program. Guidelines for the evaluation report format and the timeliness for the submission of the report shall be developed by the State Department of Education. Each county shall submit an evaluation report annually to the State Department of

Education and the State Department of Education shall write and submit a report to the Legislature and Governor.

(f) This section shall not apply to any person convicted of a violation of subdivision (b) of Section 11357 of the Health and Safety Code.

SEC. 5. Section 11802 of the Health and Safety Code is amended to read:

11802. (a) Money deposited in the county alcohol abuse education and prevention fund pursuant to subdivision (b) of Section 1463.25 of the Penal Code shall be jointly administered by the administrator of the county's alcohol program and the county office of education subject to the approval of the board of supervisors and the county office of education. A minimum of 33 percent of the fund shall be allocated to primary prevention programs in the schools and community. Primary prevention programs developed and implemented under this section shall emphasize cooperation in planning and program implementation among schools and community alcohol abuse agencies and coordination shall be demonstrated through an interagency agreement among county offices of education, school districts, and the county alcohol program administrator. The remaining money shall be allocated in accordance with the planning process established pursuant to Sections 11810.5 and 11810.6.

(b) Programs funded, planned, and implemented under this section shall emphasize a joint school-community primary education and prevention program, which may include:

(1) School and classroom-oriented programs, including, but not limited to, programs designed to encourage sound decisionmaking, an awareness of values, an awareness of alcohol and its effects, enhanced self-esteem, social and practical skills that will assist students toward maturity, enhanced or improved school climate and relationships among all school personnel and students, and furtherance of cooperative efforts of school- and community-based personnel.

(2) 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 alcohol use, and programs for special target groups, such as women, ethnic minorities, and other high-risk, high-need populations.

(3) 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 alcohol abuse.

(c) The money deposited under subdivision (a) shall supplement and not supplant any local funds made available to support the county's alcohol abuse education and prevention efforts.

(d) If the county has a drug abuse primary prevention program,

it may choose to combine or coordinate its drug and alcohol abuse education and prevention programs.

SEC. 6. Section 23196 of the Vehicle Code is amended to read:

23196. (a) Except as otherwise provided in subdivision (c), any person convicted of a violation of Section 23152 or 23153 shall, in addition to any other fine, assessment, or imprisonment imposed pursuant to law, pay an alcohol abuse education and prevention penalty assessment in an amount not to exceed fifty dollars ($50) for deposit and distribution pursuant to Section 1463.25 of the Penal Code.

(b) The payment of the penalty assessment under this section shall be ordered upon conviction of a person of a violation of Section 23152 or 23153 irrespective of any other proceeding and, if probation is granted, the payment of the penalty assessment shall also be ordered as a condition of probation, except in unusual cases which are subject to subdivision (d) of Section 1464 of the Penal Code.

(c) The court shall determine if the defendant has the ability to pay a penalty assessment. If the court determines that the defendant has the ability to pay a penalty assessment, the court may set the amount to be paid and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution. If the court determines that the defendant does not have the ability to pay a penalty assessment, the defendant shall not be required to pay a penalty assessment.

(d) Five percent of the funds allocated to primary prevention programs to the school and the communities pursuant to subdivision (a) of Section 11802 of the Health and Safety Code shall be used to conduct an annual evaluation. The annual evaluation shall be conducted by the office of the county superintendent of schools in counties where the program is operating in a single county or in the office of the county superintendent of schools in the county designated as the lead county in counties where the program is operating as a consortium of counties. The evaluation shall contain the following:

(1) A needs assessment evaluation which provides specific data regarding the problem to be resolved.

(2) A written report of the planning process outlining the deliberations, considerations, and conclusions following a review of the needs assessment.

(3) An end of fiscal year accountability evaluation that will indicate the program's continuing ability to reach appropriate program beneficiaries, deliver the appropriate benefits, and use funds appropriately.

(4) An impact evaluation charged with the task of assessing the effectiveness of the program. Guidelines for the evaluation report

format and the timeliness for the submission of the report shall be developed by the State Department of Education. Each county shall submit an evaluation report annually to the State Department of Education and the State Department of Education shall write and submit a report to the Legislature and Governor.

SEC. 6.5. Section 23196 of the Vehicle Code, as amended by Section 2 of Senate Bill 639, is amended to read:

23196. (a) Except as otherwise provided in subdivision (c), any person convicted of a violation of Section 23152 or 23153 shall, in addition to any other fine, assessment, or imprisonment imposed pursuant to law, pay an alcohol abuse education and prevention penalty assessment in an amount not to exceed fifty dollars ($50) for deposit and distribution pursuant to Section 1463.25 of the Penal Code.

(b) The payment of the penalty assessment under this section shall be ordered upon conviction of a person of a violation of Section 23152 or 23153 irrespective of any other proceeding and, if probation is granted, the payment of the penalty assessment shall also be ordered as a condition of probation, except in unusual cases which are subject to subdivision (d) of Section 1464 of the Penal Code.

(c) The court shall determine if the defendant has the ability to pay a penalty assessment. If the court determines that the defendant has the ability to pay a penalty assessment, the court may set the amount to be paid and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution. If the court determines that the defendant does not have the ability to pay a penalty assessment, the defendant shall not be required to pay a penalty assessment.

(d) Five percent of the funds allocated to primary prevention programs to the school and the communities pursuant to subdivision (a) of Section 11802 of the Health and Safety Code shall be used to conduct an annual evaluation. The annual evaluation shall be conducted by the office of the county superintendent of schools in counties where the program is operating in a single county or in the office of the county superintendent of schools in the county designated as the lead county in counties where the program is operating as a consortium of counties. The evaluation shall contain the following:

(1) A needs assessment evaluation which provides specific data regarding the problem to be resolved.

(2) A written report of the planning process outlining the deliberations, considerations, and conclusions following a review of the needs assessment.

(3) An end of fiscal year accountability evaluation that will indicate the program's continuing ability to reach appropriate

program beneficiaries, deliver the appropriate benefits, and use funds appropriately.

(4) An impact evaluation charged with the task of assessing the effectiveness of the program. Guidelines for the evaluation report format and the timeliness for the submission of the report shall be developed by the State Department of Education. Each county shall submit an evaluation report annually to the State Department of Education and the State Department of Education shall write and submit a report to the Legislature and Governor.

SEC. 7. Section 2 of Chapter 1118 of the Statutes of 1986 is amended to read:

Sec. 2. The Legislature makes the following findings and declarations of intent:

(a) A statewide alcohol abuse primary education and prevention program is essential in order to address the continuing problem of alcohol abuse throughout the state, which often exists in combination with other problems such as crime, drunk driving, and juvenile delinquency. The program is labeled as "primary" prevention because it is intended to prevent alcohol abuse before it begins or before it has reached later stages requiring treatment.

(b) The program necessarily emphasizes a continuing partnership between education agencies, alcohol abuse agencies, community service agencies, parents, and other members of the community. In order to facilitate a continuing partnership, it is of vital importance that the fiscal policy and management responsibilities for the program be shared equitably with the education agencies at the county level and that this cooperation be a major tool in efforts to achieve the successful prevention of alcohol abuse.

(c) The programs established pursuant to this act are intended by the Legislature to fund and delegate primary responsibility for program planning to local school and local alcohol abuse authorities and their constituents. These agencies are best suited for dealing with lifetime alcohol using patterns, which are formed during youth and in the family setting.

(d) This act places primary emphasis on youth, families, and communitywide alcohol abuse education and 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 are an important aspect of the total program.

(e) In view of the purposes and intent of this act, the highest priority for program funding under this act shall be designated to programs that emphasize joint school-community program alcohol abuse education and prevention planning and implementation, and that focus on children, youth, and families.

(f) It is the intent of the Legislature that, to the maximum extent possible, funds made available for the purposes of this act be used to support programs that will meet the needs of children and families.

SEC. 7.5. Section 4.5 of this bill incorporates amendments to Section 11372.7 of the Health and Safety Code proposed by both this bill and SB 639. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1988, (2) each bill amends Section 11372.7 of the Health and Safety Code, and (3) this bill is enacted after SB 639, in which case Section 11372.7 of the Health and Safety Code, as amended by SB 639, shall remain operative only until the operative date of this bill, at which time Section 4.5 of this bill shall become operative, and Section 4 of this bill shall not become operative.

SEC. 8. Section 6.5 of this bill incorporates amendments to Section 23196 of the Vehicle Code proposed by both this bill and SB 639. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1988, (2) each bill amends Section 23196 of the Vehicle Code, and (3) this bill is enacted after SB 639, in which case Section 23196 of the Vehicle Code, as amended by SB 639, shall remain operative only until the operative date of this bill, at which time Section 6.5 of this bill shall become operative, and Section 6 of this bill shall not become operative.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 622

An act to add Section 33445.6 to the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 33445.6 is added to the Health and Safety Code, to read:

33445.6. (a) If the governing board of a fire protection district finds that it is suffering a financial burden or detriment as a result of actions taken by the redevelopment agency in implementing the redevelopment plan, the district board may transmit a written copy of those findings, together with supporting information, materials, and documents, to the redevelopment agency. The redevelopment agency shall conduct a public hearing within 45 days after receiving

the findings to receive public testimony identifying the effects of the redevelopment plan on the fire protection district and suggesting revisions to the redevelopment plan as adopted or amended by the legislative body that would alleviate or eliminate the financial burden or detriment in the area or areas caused by the implementation of the redevelopment plan. The redevelopment agency shall send written notice of the public hearing to, and at the hearing receive public testimony from, any affected taxing entity. After receiving that testimony at the hearing, the agency shall consider amendments of the plan necessary to alleviate or eliminate the financial burden or detriment in the area or areas caused by the implementation of the redevelopment plan. The agency may recommend those amendments for adoption by the legislative body.

(b) Section 33353 does not apply to an amendment of the plan proposed pursuant to subdivision (a) when both of the following occur:

(1) The amendment proposes only to add significant additional capital improvement projects to alleviate or eliminate the financial burden or detriment caused by the implementation of the plan.

(2) The amendment will delete capital improvement projects or otherwise modify the plan in a way that the agency finds will result in no additional financial impact on any affected taxing entity.

(c) Any funds received by a fire protection district from a redevelopment agency to alleviate or eliminate the financial burden or detriment caused by implementation of a redevelopment plan as a result of a public hearing conducted pursuant to subdivision (a) may be used for any lawful purpose of the district.

(d) The district board of a fire protection district shall not make the findings permitted by subdivision (a) with respect to any project area more than once.

(e) The agency may recover its actual costs of complying with the procedural requirements of this section from the fire protection district.

(f) This section applies only to redevelopment plans adopted prior to January 1, 1977.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 623

An act to amend Sections 44987 and 87768.5 of, and to add Sections 45210 and 88210 to, the Education Code, and to add Section 20819.5 to the Government Code, relating to education.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 44987 of the Education Code is amended to read:

44987. (a) The governing board of a school district shall grant to any employee, upon request, a leave of absence without loss of compensation for the purpose of enabling the employee to serve as an elected officer of any local school district public employee organization, or any statewide or national public employee organization with which the local organization is affiliated.

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 the employee serves as an officer. Compensation during the leave shall include retirement fund contributions required of the school district as employer. The required employer contribution rate shall be the contribution rate for additional service credit less the member contribution rate prescribed by Section 22804. 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 school district's payment of the employee for the leave of absence, the school 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 school 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.

For purposes of this section, "school district" also means "county superintendent of schools."

(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, 1981: (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 school district an amount equal to the required State Teachers' Retirement System member and employer retirement contributions, as prescribed by this section.

The school district, following this 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 school district for the period of the service, then, as a condition to the employee's entitlement to service credit for this period, the school 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 elective officer in a public employee organization occurring after August 31, 1978.

SEC. 2. Section 45210 is added to the Education Code, to read:

45210. (a) The governing board of a school district shall grant to any classified employee, upon request, a leave of absence without loss of compensation for the purpose of enabling the employee to serve as an elected officer of any local school district public employee organization, or any statewide or national public employee organization with which the local organization is affiliated.

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 the employee serves as an officer. Compensation during the leave shall include retirement fund contributions required of the school district as employer. The employee shall earn full service credit during the leave of absence and shall pay member contributions as prescribed by subdivision (a) of Section 20603 of the Government Code. The maximum amount of the service credit earned shall not exceed eight years.

Following the school district's payment of the employee for the leave of absence, the school 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 school 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.

For purposes of this section, "school district" also means "county superintendent of schools."

(b) A classified employee who after August 31, 1987, was absent on account of elected-officer service, shall receive full service credit in the Public Employees' Retirement System; provided that, not later than April 30, 1988: (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 school district an amount equal to the required Public Employees' Retirement System member and employer retirement contributions, as prescribed by this section.

The school district, following this written request and payment, shall transmit the amount received to the Public Employees' Retirement System, informing it of the period of the employee's leave of absence. The Public Employees' 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 school district for the period of the service, then, as a condition to the employee's entitlement to service credit for this period, the school 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 elective officer in a public employee organization occurring after August 31, 1987.

SEC. 3. Section 87768.5 of the Education Code is amended 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 the employee to serve as an elected officer of any local community college district public employee organization, or of any statewide or national public employee organization with which the local organization is affiliated.

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 the 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 the 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.

SEC. 4. Section 88210 is added to the Education Code, to read:

88210. (a) The governing board of a community college district shall grant to any classified employee, upon request, a leave of absence without loss of compensation for the purpose of enabling the employee to serve as an elected officer of any local community college district public employee organization, or of any statewide or national public employee organization with which the local organization is affiliated.

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 the employee serves as an officer. Compensation during the leave shall include retirement fund contributions required of the community college district employer. The employee shall earn full service credit during the leave of absence and shall pay member contributions as prescribed by subdivision (a) of Section 20603 of the Government Code. The maximum amount of the service credit earned shall not exceed eight years.

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) A classified employee who after August 31, 1987, was absent on account of elected-officer service, shall receive full service credit in the Public Employees' Retirement System; provided that, not later than April 30, 1988: (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 Public Employees' 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 Public Employees' Retirement System, informing it of the period of the employee's leave of absence. The Public Employees' 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, 1987.

SEC. 5. Section 20819.5 is added to the Government Code, to read:

20819.5. (a) Notwithstanding any other provision of this part, a school member who is on an approved leave of absence to serve as

an elected officer of an employee organization pursuant to Section 45210 or 88210 of the Education Code, shall receive the service credit he or she would have received if he or she were not on leave, and shall have benefits he or she is entitled to under this part, based upon the salary that he or she would receive if he or she were not on leave. Both the member and his or her employer shall contribute to the retirement fund the amount that would have been contributed had the member not been on leave.

(b) The school employer shall verify the eligibility of the applicant for the elected officer's leave of absence. Service credited pursuant to this section shall not exceed eight years.

(c) The employer shall maintain the necessary records to separately identify each employee receiving service credit pursuant to this section.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 624

An act to amend Section 83103 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 83103 of the Government Code is amended to read:

83103. Members and the chairman of the Commission shall serve four-year terms beginning on February 1 and ending on January 31 or as soon thereafter as their successors are qualified, except that the initial appointees under Section 83102 shall serve six-year terms. No member or chairman who has been appointed at the beginning of a term is eligible for reappointment.

SEC. 2. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 625

An act to add Chapter 3.95 (commencing with Section 1599.60) to Division 2 of the Health and Safety Code, relating to health care.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987]

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

SECTION 1. Chapter 3.95 (commencing with Section 1599.60) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 3.95. ADMISSION CONTRACTS FOR LONG-TERM HEALTH CARE FACILITIES

1599.60. (a) "Contract of admission," as used in this chapter, includes all documents which a resident or his or her representative must sign at the time of, or as a condition of, admission to a long-term health care facility as defined in Section 1326.

(b) As used in this chapter "department" means the State Department of Health Services or its designee.

1599.61. (a) As directed by the department, all long-term health care facilities shall submit a copy of their current contract of admission to the department as notice of the content of the contract. As amendments occur and when a contract of admission has been given to the department, facilities shall immediately submit all amended versions of their contract to the department. Review by a receipt of a copy of a facility's contract by the department does not constitute approval of the contract by the state nor shall any facility make any representation to that effect to anyone.

(b) The department shall review a copy of the current admissions contract as part of its regular survey of facilities.

1599.62. (a) Contracts of admission shall not include unlawful waivers of facility liability for the health and safety or personal property of residents. No contract of admission shall include any provision which the facility knows or should know to be deceptive or unlawful under state or federal law.

(b) Violation of this chapter shall result in a Class B citation or a deficiency from the department. For purposes of this section, the admission agreement shall be viewed as a whole and shall result in only one citation.

(c) Unless otherwise expressly provided, the remedies or penalties provided by this chapter do not preclude a resident from seeking any other remedy and penalties available under all other laws of this state.

1599.63. (a) Every long-term health care facility shall make complete blank copies of its admission contract immediately available to the public at cost, upon request.

(b) Every long-term health care facility shall post conspicuously in a location accessible to public view within the facility either a complete copy of its admission contract or notice of the availability of it from the facility.

1599.64. (a) All contracts of admission shall be printed in black type of not less than 10-point type size, on plain white paper. The print shall appear on one side of the paper only.

(b) The contract shall be written in clear, coherent, and unambiguous language, using words with common and everyday meanings. It shall be appropriately divided, and each section captioned.

1599.65. (a) Prior to or at the time of admission, the facility shall make reasonable efforts to communicate the content of the contract to, and obtain on the contract the signature of, the person who is to be admitted to the facility. Unless the prospective resident has been declared legally incompetent or is unable to understand and sign the contract because of his or her medical condition, he or she shall sign or cosign the admission agreement. In the event the patient is unable to sign the contract, the reason shall be documented in the resident's medical record by the admitting physician. This provision does not preclude the facility from obtaining the signature of an agent, responsible party, or a legal representative, if applicable.

(b) The contract of admission for facilities certified to be reimbursed by Medi-Cal shall set forth, in bold capital letters of not less than 10-point type, the prohibition in Section 14110.8 of the Welfare and Institutions Code that no facility may require or solicit as a condition of admission that a Medi-Cal beneficiary have a responsible party sign or cosign the contract of admission. If the Medi-Cal beneficiary has an agent, then the signature of the agent may be required on the contract of admission.

1599.66. Every contract of admission shall clearly and explicitly state whether the facility participates in the Medi-Cal program.

1599.67. (a) Every contract of admission shall state clearly what services and supplies are covered by the facility's basic daily rate. In addition, the agreement shall specify in detail which services are optional, and the charges for these services, and indicate that residents will receive monthly statements itemizing all charges incurred by them.

(b) The contract of a facility that is a provider pursuant to Medicare, or Medi-Cal, or both, shall state that optional and covered services may be different for residents in those programs than for private pay residents. When a resident converts from Medicare or private pay to Medi-Cal, the facility shall give the resident a form listing Medi-Cal optional and covered services.

(c) Every contract of admission shall clearly state that the facility is required by law to provide no less than 30 days written notice to the residents of any increase for optional services or in the daily room rate charged by the facility, except as provided in subdivision (b) of Section 1288.

1599.68. Any long-term health care facility that imposes interest charges on delinquent accounts shall clearly state in the contract of admission the rate of interest so charged and the method of computation.

1599.69. (a) The contract of admission for any long-term health care facility that is a Medi-Cal certified facility shall state in bold capital letters of not less than 10-point type that neither the prospective resident, nor his or her representative, may be required to pay privately for any period during which the resident has been approved for payment by Medi-Cal, and that as provided by Section 14019.3 of the Welfare and Institutions Code, upon presentation of the Medi-Cal card or other proof of eligibility, the facility shall submit a Medi-Cal claim for reimbursement, subject to the rules and regulations of the Medi-Cal program, and the facility shall return any and all payments made by the beneficiary, or any person on behalf of the beneficiary, for Medi-Cal program covered services upon receipt of Medi-Cal payment. The contract shall state in bold capital letters of not less than 10-point type that no certified facility may require as a condition of admission, either in its contract of admission or by oral promise prior to signing the contract, that residents remain in private pay status for a specified period of time.

(b) No contract of admission may require notice of a resident's intent to convert to Medi-Cal status prior to the date of the resident's application for Medi-Cal status. This subdivision does not preclude the facility from requesting notice from a resident who has been admitted.

1599.70. (a) No contract of admission may require a security deposit from a Medi-Cal beneficiary who applies for admission to the facility as a Medi-Cal patient.

(b) Any security deposit from a person paying privately upon admission shall be returned within 14 days of the private account being closed, or first Medi-Cal payment, whichever is later, and with no deduction for administration or handling charges.

1599.71. (a) No contract of admission shall require the resident to pay for days beyond the date of his or her death or involuntary discharge from the facility, except that a facility may charge the resident for a maximum of three days at the basic daily rate in the event that the resident is voluntarily discharged from the facility less than three days following his or her admission. This section does not affect the provision for a maximum of seven days' payment under the bedhold regulation as specified in Section 72520 of Title 22 of the California Administrative Code.

(b) No contract of admission shall require advance notice of voluntary discharge from a facility.

1599.72. No contract of admission shall include a clause requiring residents to sign a consent to all treatment ordered by any physician. Contracts of admission may require consent only for routine nursing care or emergency care. The admission contract shall contain a clause which informs the patient of the right to refuse treatments as

set forth in paragraph (4) of subdivision (a) of Section 72527 of Title 22 of the California Administrative Code.

1599.73. (a) Every contract of admission shall state that residents have a right to confidential treatment of medical information.

(b) The contract shall provide a means by which the resident may authorize the disclosure of information to specific persons, by attachment of a separate sheet that conforms to the specifications of Section 56 of the Civil Code. After admission, the facility shall encourage competent residents to execute a durable power of attorney for health care in the event that he or she becomes unable to give consent for disclosure. The facility shall make available upon request to the long-term care ombudsman a list of newly admitted patients.

1599.74. (a) The department shall translate both the statutory Patients' Bill of Rights, as provided in Chapter 3.9 (commencing with Section 1599), the regulatory Patients' Bill of Rights for Skilled Nursing Facilities (commencing with Section 72527 of Title 22 of the California Administrative Code), and, if appropriate, the regulatory Patients' Bill of Rights for Intermediate Care Facilities (commencing with Section 73523 of Title 22 of the California Administrative Code), into Spanish and Chinese, and into other languages as needed for ethnic groups representing 1 percent or more of the nursing home population in the state. The department shall also translate the Patients' Bill of Rights into braille or have it recorded for the use of blind patients, or both. These translations shall be sent to all long-term health care facilities in the state.

(b) Every contract of admission shall contain a complete copy of both the statutory and regulatory Patients' Bill of Rights. The text of the Patients' Bill of Rights shall be in legible print of no less than 10-point type. If a translation has been provided by the department, the text given to non-English-speaking residents shall be in their language.

(c) The contract shall also contain a separate written acknowledgement that the resident has been informed of the Patients' Bill of Rights.

Written acknowledgement by the resident or the resident's representative must be made either on a separate document or in the agreement itself next to the clause informing the resident of these regulatory rights. Written acknowledgement by use of the signature on the agreement as a whole does not meet this requirement.

1599.75. (a) When referring to a resident's obligation to observe facility rules, the contract of admission shall indicate that the rules must be reasonable, and that there is a facility procedure for suggesting changes in the rules.

(b) The contract of admission shall specify that a copy of the facility grievance procedure, for resolution of resident complaints about facility practices, is available.

(c) The agreement shall also inform residents of their right to contact the State Department of Health Services or the long-term

care ombudsman, or both, regarding grievances against the facility.

1599.76. (a) No contract of admission shall list any ground for involuntary transfer or discharge of the resident except those grounds which are specifically enumerated in either federal or state law.

(b) Every contract of admission to a long-term health care facility that participates in the Medi-Cal program shall state that the facility may not transfer or seek to evict any resident solely as a result of the resident changing his or her manner of purchasing the services from private payment or Medicare to Medi-Cal.

1599.77. With respect to transfer or eviction of a resident pursuant to Section 1439.7:

(a) Contracts of admission shall speak only of "material" or "fraudulent" misrepresentation of finances as possible grounds for discharge under that section.

(b) All contracts of admission shall state that the resident may file a complaint with the Office of the State Long-Term Care Ombudsman, or the department, or both, regarding any notice of discharge for material or fraudulent misrepresentation.

1599.78. All contracts of admission shall state that except in an emergency, no resident may be involuntarily transferred within or discharged from a long-term health care facility unless he or she is given reasonable notice in writing and transfer or discharge planning as required by law. The written notice shall state the reason for the transfer or discharge. The facility shall immediately notify the Office of the State Long-Term Care Ombudsman in every case of involuntary discharge as specified in Section 1439.7 of the Welfare and Institutions Code.

1599.79. Every contract of admission shall meet the requirements of Section 72520 of Title 22 of the California Administrative Code, which requires that the facility offer to hold a bed for the resident in the event the resident must be transferred to an acute care hospital for seven days or less. The facility shall also give the resident, or a representative for the resident, notice of the rights to a bedhold at the time of transfer. The resident or representative for the resident has 24 hours from receipt of notice to request the bedhold. The contract of admission shall state that the facility shall offer the next available appropriate bed to the resident in the event the facility fails to follow this required procedure. The facility shall inform the resident that Medi-Cal will pay for up to seven bedhold days.

1599.80. Facilities that wish to photograph a resident for other than staff identification or health care purposes shall obtain permission from the resident whether for one photograph or for multiple photographs for one particular purpose on a document separate from the admission contract as a whole. This document shall describe the specific use to be made of the photograph and indicate that the photograph will be used only for that purpose.

1599.81. (a) All contracts of admission that contain an arbitration

clause shall clearly indicate that agreement to arbitration is not a precondition for medical treatment or for admission to the facility.

(b) All arbitration clauses shall be included on a form separate from the rest of the admission contract. This attachment shall contain space for the signature of any applicant who agrees to arbitration of disputes.

(c) On the attachments, clauses referring to arbitration of medical malpractice claims, as provided for under Section 1295 of the Code of Civil Procedure, shall be clearly separated from other arbitration clauses, and separate signatures shall be required for each clause.

(d) In the event the contract contains an arbitration clause, the contract attachment pertaining to arbitration shall contain notice that under Section 1430, the patient may not waive his or her ability to sue for violation of the Patient's Bill of Rights.

1599.82. No contract of admission shall include a clause that purports to alter the statutory period for filing an action against a facility.

1599.83. If a provision for the payment of attorney's fees is included in the admission contract, it shall state that in disputes arising from the admission contract, the prevailing party shall be entitled to attorney's fees.

1599.84. This article applies to new admissions to skilled nursing and intermediate care facilities on and after January 1, 1988. This article shall not be construed to require the execution of new admission agreements for patients who were residing in those facilities prior to the enactment of this article. However, those patients shall be given notice of changes in admission contracts pursuant to this article.

CHAPTER 626

An act to add Section 1597.056 to the Health and Safety Code, relating to day care.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 1597.056 is added to the Health and Safety Code, to read:

1597.056. Notwithstanding any other educational requirements, a person may be hired to provide extended day care for children of a given grade level in a day care center if the person is otherwise qualified to be hired by a school district to teach children of that grade level.

CHAPTER 627

An act to amend Section 181 of, and to add Section 1203 to, the Corporations Code, relating to corporations.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 181 of the Corporations Code is amended to read:

181. "Reorganization" means either:

(a) A merger pursuant to Chapter 11 (commencing with Section 1100) other than a short-form merger (a "merger reorganization").

(b) The acquisition by one corporation in exchange in whole or in part for its equity securities (or the equity securities of a corporation which is in control of the acquiring corporation) of shares of another corporation (an "exchange reorganization").

(c) The acquisition by one corporation in exchange in whole or in part for its equity securities (or the equity securities of a corporation which is in control of the acquiring corporation) or for its debt securities (or debt securities of a corporation which is in control of the acquiring corporation) which are not adequately secured and which have a maturity date in excess of five years after the consummation of the reorganization, or both, of all or substantially all of the assets of another corporation (a "sale-of-assets reorganization").

SEC. 2. Section 1203 is added to the Corporations Code, to read:

1203. (a) If a proposal for a reorganization or short-form merger is made to a corporation or to some or all of that corporation's shareholders by a party, either directly or indirectly, controlling that corporation or involved in the management or direction of the management of that corporation, a report of an independent appraiser attesting that the value of the proposal is just and reasonable as to the shareholders of the target corporation shall accompany the proposal.

(b) Any proposal for a reorganization or short-form merger made by any other person to the corporation or to some or all of that corporation's shareholders while the proposal made under subdivision (a) is pending shall be transmitted by the directors of that corporation to its shareholders along with any documents provided by the offeror. In the event a vote of the targeted corporation's shareholders is required under subdivision (a) of Section 1201 with respect to this later offer, the directors shall, if a vote was not required on the proposal made pursuant to subdivision (a), arrange for the vote on the later offer. The proposal under subdivision (a) may not be effected or closed pending a vote on the later offer.

In the event the later offer does not require a vote of the targeted corporation's shareholders under subdivision (a) of Section 1201, the pending offer made under subdivision (a) shall not be effected or closed until the targeted corporation's shareholders have had a reasonable opportunity to consider and respond to the later offer. In no event shall the offeror under subdivision (a) be precluded from amending that offer in light of the later offer, and in that event, the provisions of this subdivision shall apply pari passu.

CHAPTER 628

An act to amend Section 91003 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987]

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

SECTION 1. Section 91003 of the Government Code is amended to read:

91003. (a) Any person residing in the jurisdiction may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this title. The court may in its discretion require any plaintiff other than the commission to file a complaint with the commission prior to seeking injunctive relief. The court may award to a plaintiff or defendant who prevails his costs of litigation, including reasonable attorney's fees.

(b) Upon a preliminary showing in an action brought by a person residing in the jurisdiction that a violation of Article 1 (commencing with Section 87100), Article 4 (commencing with Section 87400), or Article 4.5 (commencing with Section 87450) of Chapter 7 of this title or of a disqualification provision of a Conflict of Interest Code has occurred, the court may restrain the execution of any official action in relation to which such a violation occurred, pending final adjudication. If it is ultimately determined that a violation has occurred and that the official action might not otherwise have been taken or approved, the court may set the official action aside as void. The official actions covered by this subsection include, but are not limited to orders, permits, resolutions and contracts, but do not include the enactment of any state legislation. In considering the granting of preliminary or permanent relief under this subsection, the court shall accord due weight to any injury that may be suffered by innocent persons relying on the official action.

SEC. 2. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 629

An act to add Section 1013 to the Water Code, relating to water.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 1013 is added to the Water Code, to read:

1013. The Imperial Irrigation District, acting under a contract with the United States for diversion and use of Colorado River water or pursuant to the Constitution or to this chapter, or complying with an order of the Secretary of the Interior, a court, or the board, to reduce through conservation measures, the volume of the flow of water directly or indirectly into the Salton Sea, shall not be held liable for any effects to the Salton Sea or its bordering area resulting from the conservation measures.

This section shall not be construed to exempt the Imperial Irrigation District from any requirements established under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

CHAPTER 630

An act to add Section 7065.2 to the Business and Professions Code, relating to contractors.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 7065.2 is added to the Business and Professions Code, to read:

7065.2. Notwithstanding Section 7065, the registrar may waive the examination for a contractor's license if the applicant has previously held a valid contractor's license in this state and has been acting in the capacity of a contractor for the United States government in a position exempt from licensure under this chapter.

CHAPTER 631

An act to add Section 21370.1 to the Vehicle Code, relating to highways.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 21370.1 is added to the Vehicle Code, to read:

21370.1. The Department of Transportation, in cooperation with the Department of California Highway Patrol, shall study the feasibility of performing nonemergency maintenance work activities upon state highways during low-volume traffic hours. The study shall at a minimum consider the following criteria:

(a) Motorist safety.

(b) Worker safety.

(c) Working conditions.

(d) Cost of performing the work.

(e) Cost of delays to the motorists.

Upon completion of the study, the department shall develop a highway lane closure policy and procedure and report its findings and recommendations to the Legislature on or before March 31, 1988.

CHAPTER 632

An act to amend Sections 82013, and 84206 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 82013 of the Government Code is amended to read:

82013. "Committee" means any person or combination of persons who directly or indirectly does any of the following:

(a) Receives contributions totaling one thousand dollars ($1,000) or more in a calendar year.

(b) Makes independent expenditures totaling one thousand dollars ($1,000) or more in a calendar year; or

(c) Makes contributions totaling ten thousand dollars ($10,000) or more in a calendar year to or at the behest of candidates or committees.

A person or combination of persons that becomes a committee

shall retain its status as a committee until such time as that status is terminated pursuant to Section 84214.

SEC. 2. Section 84206 of the Government Code is amended to read:

84206. (a) The commission shall provide by regulation for a short form for filing reports required by this article for candidates or officeholders who receive contributions of less than one thousand dollars ($1,000), and who make expenditures of less than one thousand dollars ($1,000), in a calendar year.

(b) For the purposes of this section, in calculating whether one thousand dollars ($1,000) in expenditures have been made, payments for a filing fee or for a statement of qualification shall not be included if these payments have been made from the candidate's personal funds.

SEC. 3. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 633

An act to amend Section 67 of, and to add Article 7 (commencing with Section 3460) to Chapter 2 of Part 1 of Division 3 of, the Fish and Game Code, relating to fish and game.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 67 of the Fish and Game Code is amended to read:

67. "Person" means any natural person or any partnership, corporation, or other type of association.

SEC. 2. Article 7 (commencing with Section 3460) is added to Chapter 2 of Part 1 of Division 3 of the Fish and Game Code, to read:

Article 7. The California Waterfowl Habitat Program

3460. (a) Subject to appropriation pursuant to Section 3467, the director may enter into contracts with nonpublic entities which are owners of record, or with lessees, who have the owners of record execute the contract, of land determined by the director to be important for the conservation of waterfowl. The contract shall enforceably restrict the use of the land for the conservation of waterfowl and their habitat consistent with Section 8 of Article XIII of the California Constitution.

(b) The director shall give priority to contracts that have the

greatest potential for restoring, enhancing, and protecting high quality waterfowl habitat, especially that which is subject to destruction, drastic modification, or significant curtailment of habitat values.

3461. Each contract shall be for an initial term of 10 years and shall include all of the following:

(a) The designation of the owner of record and any lessee, and the legal description and the assessor's parcel number of the land subject to the contract.

(b) An agreement by the owner and any lessee to restore, enhance, and protect the waterfowl habitat character of the described land and to carry out a waterfowl habitat management plan developed with the department.

(c) Specification of the amount and date in each year that the payment is to be made by the department to the owner or lessee, which shall be calculated at the rate or rates that the director determines to be fair and reasonable in consideration of the obligations undertaken by the owner or lessee.

(d) A requirement that the owner or lessee do either of the following:

(1) Refund to the state all payments received under the contract plus interest at the legal rate, as specified in Section 3289 of the Civil Code, upon the owner's or lessee's violation of the contract, or any extension thereof, if the director determines that the violation warrants termination of the contract and the director terminates the contract.

(2) Make refunds or accept payment adjustments that the director determines are appropriate, not to exceed the total amount paid by the state to the owner or lessee in the preceding calendar year plus interest at the legal rate, as specified in Section 3289 of the Civil Code, if the director determines that the violation by the owner or lessee does not warrant termination of the contract.

(e) A requirement that the department reduce the amount of any payment to the owner or lessee under subdivision (c) by an amount equal to the portion of any payment under the Federal Water Bank Program (16 U.S.C. Sec. 1301 et seq.) which the department determines to be in compensation for the same obligation undertaken by the owner under the water bank program.

(f) A requirement that the department monitor compliance with the management plan or contract with the United States Soil Conservation Service or other appropriate agency, entity, or person to monitor compliance with the management plan, and that the owner or lessee allows access for the monitoring.

(g) Any additional provisions that the director determines are desirable to effectuate the purposes of the program or to facilitate its administration.

3462. (a) Not later than 20 days after the director has entered into a contract pursuant to this division, a copy of the contract particularly describing the subject habitat as required by subdivision

(a) of Section 3461 shall be recorded by the department in the office of the county recorder in each county in which any portion of the areas subject to the contract is located. The contract shall be indexed by the recorder in the grantor-grantee index to the name of the owner of record as grantor and to the department as grantee.

(b) Notwithstanding Section 27383 of the Government Code, the department shall pay the fees for recording and indexing the contract, and the department shall deduct the amount paid from the amounts due to the owner under the contract.

3464. The contract shall be automatically renewed in the same manner as contracts are renewed and extended, or noticed for nonrenewal, under the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1 of Title 5 of the Government Code). Upon the request of the owner or lessee, the director shall reexamine the payment rate for the contract at five-year intervals, considering the then current management costs and, with the concurrence of the owner or lessee, make any needed adjustments in rates for the remainder of the contract term.

3465. (a) If during the contract period the owner or lessee is divested of the use of the waterfowl habitat subject to the contract, the owner or lessee shall notify the department concurrent with that divestment. Any unearned payment shall immediately be refunded by the owner or lessee to the department.

(b) If the owner or lessee divests himself or herself of the use of the area subject to a contract by sale or otherwise, the person succeeding to that use is subject to all of the terms and conditions of the contract.

3466. The director and the owner or lessee may mutually agree to modify the terms and conditions of a contract under this division as the director may determine to be desirable to carry out the purposes of, or to facilitate administration of, the program.

3467. The California Waterfowl Habitat Preservation Account is hereby created in the Fish and Game Preservation Fund, and the money in the account shall be transferred to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Division 4 of Title 2 of the Government Code. The proceeds of the investment deposited in the account shall be available, upon appropriation by the Legislature, for expenditure pursuant to this article. However, not more than 7 percent of the money appropriated from the account for expenditure in any fiscal year shall be expended in that fiscal year for administrative costs of the department.

SEC. 3. The sum of one hundred thousand dollars ($100,000) is hereby transferred from the California Environmental License Plate Fund to the California Waterfowl Habitat Preservation Account in the Fish and Game Preservation Fund.

The Legislature finds and declares that this section is a one-time transfer of funds to the California Waterfowl Habitat Preservation Account.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 634

An act to amend Section 6254 of the Government Code, relating to records, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. 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 intraagency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those 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), until the pending 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 paragraph (1).

(3) Preliminary drafts, notes, or interagency or intraagency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (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 as defined by subdivision (c) 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 in this division 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.

(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 the 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. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, or 289 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, or 289 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(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 or 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 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 the 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 the 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 that 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 of 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 the licensing agency to establish his or her 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 the financial data would be competitively injurious to the applicant and the 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.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, which reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services which is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit

Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until such time as a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals which has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, which relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

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.

Nothing in this section is to be construed as preventing any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

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 authorize the withholding of the names of victims of sexual crimes from the public records disclosure requirements of existing law at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 635

An act to amend Section 6254 of the Government Code, relating to public records.

[Approved by Governor September 12, 1987 Filed with Secretary of State September 14, 1987.]

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

SECTION 1. 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 intraagency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those 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), until the pending 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 paragraph (1).

(3) Preliminary drafts, notes, or interagency or intraagency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (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 as defined by subdivision (c) 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 in this division 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.

(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 the 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. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, or 289 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, or 289 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(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 or 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 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 the 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 the 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 that 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 of 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 the licensing agency to establish his or her 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 the financial data would be competitively injurious to the applicant and the 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.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, which reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services which is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until such time as a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals which has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, which relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

CHAPTER 636

An act to amend Section 25750 of the Business and Professions Code, relating to alcoholic beverages.

[Became law without Governor's signature. Filed with Secretary of State September 14, 1987.]

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

SECTION 1. Section 25750 of the Business and Professions Code is amended to read:

25750. (a) The department shall make and prescribe those reasonable rules as may be necessary or proper to carry out the purposes and intent of Section 22 of Article XX of the California Constitution and to enable it to exercise the powers and perform the duties conferred upon it by that section or by this division, not inconsistent with any statute of this state, including particularly this division and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Any regulation which excludes nude persons from licensed premises shall not apply to a nude person at licensed premises located at a nudist resort or nudist campground which was in existence prior to January 1, 1977, and whose operation is in conformance with local land use regulations.

(c) Subdivision (b) is applicable only in a county where the board of supervisors of the county in which the licensed premises is located adopts an ordinance or resolution making subdivision (b) applicable in that county, and the sheriff of that county certifies that no extraordinary police problem would be created thereby.

CHAPTER 637

An act to add Section 12528 to the Government Code, and to amend Sections 15630, 15631, 15632, 15633, and 15635 of, and to add Section 15610.1 to, the Welfare and Institutions Code, relating to Public Social Services, and making an appropriation therefor.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

I am deleting the $115,800 appropriation contained in Section 8 of Senate Bill No. 526

This bill would establish a Medi-Cal patient abuse and neglect program in the Attorney General's Office to supplement enforcement activities by the State Department of Health Services and local law enforcement. It would also appropriate $115,800 from the General Fund for the program.

This is a very complex program proposal that involves the State Departments of Justice and Health Services, the federal government and at the local level, law enforcement agencies, the district attorneys office and the courts in each impacted county. It is important that we develop a carefully coordinated program that is subjected to the normal budget process at each impacted governmental level

With this deletion, I approve Senate Bill No 526.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 12528 is added to the Government Code, to read:

12528. (a) There is in the Office of the Attorney General the Bureau of Medi-Cal Fraud, which shall implement Sections 1903(a)(6), 1903(b)(3), and 1903(g) of the federal Social Security Act, as amended by the federal Medicare-Medicaid Anti-Fraud and Abuse Amendments (Public Law 95-124), and is authorized to conduct a statewide program for investigating and prosecuting, and referring for prosecution, violations of all applicable laws pertaining to fraud in the administration of the Medi-Cal program, the provision of medical assistance or medical supplies, or the activities of providers of medical assistance or medical suppliers under the Medi-Cal plan. The investigation of fraud by beneficiaries of the Medi-Cal program is the responsibility of the Audits and Investigations Branch of the State Department of Health Services.

(b) The bureau shall also review complaints alleging abuse or neglect of patients in health care facilities receiving payments under the Medi-Cal plan and may review complaints of the misappropriation of patient's private funds in such facilities and complaints of discriminatory treatment of Medi-Cal beneficiaries by such facilities.

(1) If the initial review indicates substantial potential for criminal prosecution, the bureau shall investigate the complaint or refer it to an appropriate criminal investigative or prosecutive authority.

(2) If the initial review does not indicate a substantial potential for criminal prosecution, the bureau shall inform the referring agency of its determination and may, if appropriate, refer the complaint to the State Department of Health Services.

(c) Local law enforcement and prosecution agencies shall have concurrent jurisdiction with the bureau to investigate and prosecute violations of law referred to in this section.

(d) If the bureau, in carrying out its duties and responsibilities under subdivisions (a) and (b), discovers that overpayments have been made to a health care facility or other provider of medical assistance or medical supplies under the Medi-Cal plan, the bureau shall either attempt to collect the overpayment or refer the matter to the State Department of Health Services for collection.

(e) Where a prosecuting authority other than the bureau elects to prosecute a case reported to the bureau, the bureau shall, upon request of that prosecuting authority, ensure that those responsible for the prosecutive decision and the preparation of the case for trial have the opportunity to participate in the investigation from its inception and will provide all necessary assistance to the prosecuting authority throughout all resulting prosecutions.

(f) The bureau shall make available to federal investigators or prosecutors all information in its possession concerning fraud in the provision or administration of medical assistance under the Medi-Cal plan and shall cooperate with such officials in coordinating any federal and state investigations or prosecutions involving the same suspects or allegations.

(g) The bureau shall safeguard the privacy rights of all individuals and shall provide safeguards to prevent the misuse of information under its control, and all agencies which are required to report complaints alleging abuse or neglect of patients shall maintain the confidentiality of those reports until such time as the report becomes a matter of public record.

(h) The bureau shall offer training programs to local law enforcement and prosecutorial personnel in investigating and prosecuting crimes against elders and dependent adults, and to the State Department of Health Services, the State Department of Social Services, the county adult protective services agencies and to the Long-Term Care Ombudsman in evaluating and documenting criminal abuse against elders and dependent adults.

(i) The state Long-Term Care Ombudsman, the Licensing and Certification Division in the Department of Health Services, and the Statistical Services Bureau in the State Department of Social Services shall report to the bureau all instances of abuse and neglect of elders and dependent adults, as defined in Section 15610 of the Welfare and Institutions Code, which come to their attention.

(j) The bureau shall annually submit to the Legislature a report on the nature and extent of crimes in this state against patients in health facilities receiving payments from the Medi-Cal program and the response of the criminal justice system to those crimes.

(k) The bureau shall collect information on a statewide basis regarding cases of abuse and neglect of patients in health facilities receiving payments from the Medi-Cal program for the primary purpose of analyzing the information it collects and disseminating its conclusions to local law enforcement agencies and to regulatory and licensing authorities.

(*l*) For purposes of this section, "bureau" means the Bureau of Medi-Cal Fraud in the Office of the Attorney General.

SEC. 2. Section 15610.1 is added to the Welfare and Institutions Code, to read:

15610.1. For purposes of this chapter, "bureau" means the Bureau of Medi-Cal Fraud in the Office of the Attorney General.

SEC. 3. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency, who in his or her professional capacity or within the scope of his or her employment, either has observed an incident that reasonably appears to be physical abuse, has observed a physical injury where the nature of

the injury, its location on the body, or the repetition of the injury, clearly indicates that physical abuse has occurred, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, shall report the known or suspected instance of physical abuse either to the long-term care ombudsman coordinator or to a local law enforcement agency when the physical abuse is alleged to have occurred in a long-term care facility, or to either the county adult protective services agency or to a local law enforcement agency when the physical abuse is alleged to have occurred anywhere else, immediately or as soon as possible by telephone, and shall prepare and send a written report thereof within two working days.

(b) Any care custodian, health practitioner, or employee of an adult protective services agency or local law enforcement agency who has knowledge of or reasonably suspects that other types of elder or dependent adult abuse have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse either to a long-term care ombudsman coordinator when the abuse is alleged to have occurred in a long-term care facility, or to the county adult protective services agency when the abuse is alleged to have occurred anywhere else. If the conduct involves criminal activity not already covered by subdivision (a), it may be immediately reported to the appropriate law enforcement agency.

(c) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of abuse of an elder or a dependent adult, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(d) The reporting duties under this section are individual, and, no supervisor or administrator shall impede or inhibit the reporting duties and no person making such a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(e) (1) An adult protective services agency shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of physical abuse of an elder or dependent adult. A county adult protective services agency shall also send a written report thereof within two working days of receiving

the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision.

Only a written report, sent within two working days, shall be required in the case of types of elder and dependent adult abuse other than physical abuse.

If an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult protective services agency shall immediately inform the person making the report that he or she must make it to the long-term care ombudsman coordinator or to a local law enforcement agency. The adult protective services agency shall not accept the reports.

(2) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse involving physical abuse or neglect determines, pursuant to its investigation, that such abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be such a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information reported pursuant to this paragraph shall remain confidential and shall not be disclosed.

(f) A law enforcement agency shall immediately or as soon as practically possible report by telephone to the long-term care ombudsman coordinator when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or a dependent adult. A law enforcement agency shall also send a written report thereof within two working days of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

(g) A long-term care ombudsman coordinator may report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent.

A long-term care ombudsman coordinator and the Licensing and Certification Division of the State Department of Health Services shall immediately report by telephone and in writing within two working days to the bureau any instance of neglect occurring in a health care facility, which has seriously harmed any patient or

reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until such time as the report becomes a matter of public record.

(h) When a county adult protective services agency, a long-term care ombudsman coordinator, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.

(i) Each long-term care ombudsman coordinator shall report to the county adult protective services agency monthly on the reports it receives pursuant to this chapter. The reports shall be on forms adopted by the department. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the number of persons abused, the type of abuse, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

(j) Each county adult protective services agency shall report to the State Department of Social Services monthly on the reports received pursuant to this chapter. The reports shall be made on forms adopted by the department. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the number of persons abused, the type of abuse sustained, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

The county's report to the department shall include reports it receives from the long-term care ombudsman coordinator pursuant to subdivision (i).

The State Department of Social Services shall refer to the bureau monthly summaries of the reports of elder and dependent adult abuse, neglect, and abandonment which it receives from county adult protective services agencies.

SEC. 4. Section 15631 of the Welfare and Institutions Code is amended to read:

15631. (a) Any other person who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse may report that abuse to a long-term care ombudsman coordinator when the abuse is alleged to have occurred in a long-term care facility, or to the county adult protective services agency when the abuse is alleged to have occurred anywhere else.

(b) For the purposes of this section, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a

suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse.

SEC. 5. Section 15632 of the Welfare and Institutions Code is amended to read:

15632. (a) Any person who enters into employment on or after January 1, 1986, as a care custodian, health practitioner, or with an adult protective services agency or a local law enforcement agency, prior to commencing his or her employment and as a prerequisite to that employment shall sign a statement on a form, which shall be provided by the prospective employer, to the effect that he or she has knowledge of the provisions of Section 15630 and will comply with its provisions. The signed statement shall be retained by the employer.

(b) Agencies or facilities that employ persons required to make reports pursuant to Section 15630, who were employed prior to January 1, 1986, shall inform those persons of their responsibility to make reports by delivering to them a copy of the statement specified in subdivision (c).

(c) The statement shall be in the following form:

California state law REQUIRES care custodians, health practitioners, and employees of adult protective services agencies and local law enforcement agencies to report physical abuse of elders and dependent adults.

Those professionals must report physical abuse under the following circumstances:

(1) When the reporter has observed an incident that reasonably appears to be physical abuse.

(2) When the reporter has observed a physical injury where the nature of the injury, its location on the body, or the repetition of the injury, clearly indicates that physical abuse has occurred.

(3) When the reporter is told by an elder or a dependent adult that he or she has experienced behavior constituting physical abuse.

The report must be made immediately, or as soon as possible, by telephone to either the long-term care ombudsman coordinator or to a local law enforcement agency when the abuse is alleged to have occurred in a long-term care facility, or to either the county adult protective services agency or to a local law enforcement agency when the abuse is alleged to have occurred anywhere else, and must be followed by a written report within two working days. The report must include:

(1) The name of the person making the report.

(2) The name, age, and present location of the elder or dependent adult.

(3) The names and addresses of family members or other persons responsible for the elder or dependent adult's care, if known.

(4) The nature and extent of the person's condition.

(5) Any information that led the reporter to suspect that abuse has occurred.

(6) The date of the incident.

State law also PERMITS the reporting of other types of abuse of elders and dependent adults, such as neglect, intimidation, fiduciary abuse, abandonment, or other treatment that results in physical harm, pain, or mental suffering. These reports may be made when the reporter has actual knowledge or reasonably suspects that abuse has occurred.

The law provides that care custodians, health practitioners, or employees of adult protective services agencies or local law enforcement agencies shall not incur either civil or criminal liability for any report they are required or permitted to make under this law.

However, failure to report physical abuse of an elder or dependent adult is a misdemeanor, punishable by not more than six months in the county jail or by a fine of not more than one thousand dollars ($1,000), or by both fine and imprisonment.

Reports made under this law are confidential and may be disclosed only to the agencies specified. Violation of the confidentiality provisions is also a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than five hundred dollars ($500), or by both fine and imprisonment.

The following is the exact text of portions of the elder and dependment adult abuse reporting law which pertain to the responsibilities of professionals who are required to report abuse of elders and dependent adults:

CONDITIONS UNDER WHICH REPORTING OF PHYSICAL ABUSE IS REQUIRED:

Welfare and Institutions Code Section 15630 (a): Any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency, who in his or her professional capacity or within the scope of his or her employment, either has observed an incident that reasonably appears to be physical abuse, has observed a physical injury where the nature of the injury, its location on the body, or the repetition of the injury clearly indicates that physical abuse has occurred, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, shall report the known or suspected instance of physical abuse either to the long-term care ombudsman coordinator or to a local law enforcement agency when the physical abuse is alleged to have occurred in a long-term care facility, or to either the county adult protective services agency or to a local law enforcement agency when the physical abuse is alleged to have occurred anywhere else, immediately or as soon as possible by telephone, and shall prepare and send a written report thereof within two working days.

CONDITIONS UNDER WHICH REPORTING OF ABUSE IS PERMITTED:

Welfare and Institutions Code Section 15630 (b): Any care custodian, health practitioner, or employee of an adult protective services agency or local law enforcement agency who has knowledge of or reasonably suspects that other types of abuse have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report such known or suspected instance of abuse to a long-term care ombudsman coordinator when the abuse is alleged to have occurred in a long-term care facility, or to the county adult protective services agency when the abuse is alleged to have occurred anywhere else.

PROFESSIONALS WHO ARE REQUIRED TO REPORT PHYSICAL ABUSE OF ELDERS AND DEPENDENT ADULTS:

(a) Care custodians, as defined by Welfare and Institutions Code Section 15610 (h):

"Care custodian" means an administrator or an employee, except persons who do not work directly with elders or dependent adults as part of their offical duties, including members of support staff and maintenance staff, of any of the following public or private facilities:

(1) Twenty-four hour health facilities, as defined in Section 1250, 1250.2, or 1250.3 of the Health and Safety Code.

(2) Clinics.

(3) Home health agencies.

(4) Adult day health care centers.

(5) Secondary schools which serve 18- to 22-year-old dependent adults and postsecondary educational institutions which serve dependent adults or elders.

(6) Sheltered workshops.

(7) Camps.

(8) Community care facilities, as defined in Section 1502 of the Health and Safety Code and residential care facilities for the elderly, as defined by Section 1569.2 of the Health and Safety Code.

(9) Respite care facilities.

(10) Foster homes.

(11) Regional centers for persons with developmental disabilities.

(12) State Department of Social Services and State Department of Health Services licensing divisions.

(13) County welfare departments.

(14) Offices of patients' rights advocates.

(15) Office of the long-term care ombudsman.

(16) Offices of public conservators and public guardians.

(17) Any other protective or public assistance agency which provides medical services or social services to elders or dependent adults.

(b) Health practitioners, as defined by Welfare and Institutions Code Section 15610 (i):

"Health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor,

licensed nurse, dental hygienist, licensed clinical social worker, marriage, family and child counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, a person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage, family and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, or an unlicensed marriage, family and child counselor intern registered under Section 4980.44 of the Business and Professions Code, a state or county public health employee who treats an elder or a dependent adult for any condition, a coroner, or a religious practitioner who diagnoses, examines, or treats elder or dependent adults.

(c) Employees of adult protective services agencies, as defined by Welfare and Institutions Code Section 15610 (j):

"Adult protective services agency" means a county welfare department except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

(d) Employees of local law enforcement agencies, as defined by Welfare and Institutions Code Section 15610 (q):

"Local law enforcement agency" means a city police or county sheriff's department, or a county probation department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

DEFINITION OF "ELDER":

Welfare and Institutions Code Section 15610 (a): "Elder" means any person residing in this state, 65 years of age or older.

DEFINITION OF "DEPENDENT ADULT":

Welfare and Institutions Code Section 15610 (b): "Dependent adult" means any person residing in this state, between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

For purposes of this chapter, "dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility as defined by Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

DEFINITION OF "ABUSE OF AN ELDER OR A DEPENDENT

ADULT":

Welfare and Institutions Code Section 15610 (g): "Abuse of an elder or a dependent adult" means physical abuse, neglect, intimidation, cruel punishment, fiduciary abuse, abandonment, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods and services which are necessary to avoid physical harm or mental suffering.

DEFINITION OF "PHYSICAL ABUSE":

Welfare and Institutions Code Section 15610 (c): "Physical abuse" means all of the following:

(a) Assault, as defined in Section 240 of the Penal Code.

(b) Battery, as defined in Section 242 of the Penal Code.

(c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined by Section 245 of the Penal Code.

(d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.

(e) Sexual assault, which means any of the following:

(1) Sexual battery, as defined in Section 243.4 of the Penal Code.

(2) Rape, as defined in Section 261 of the Penal Code.

(3) Rape in concert, as described in Section 264.1 of the Penal Code.

(4) Incest, as defined in Section 285 of the Penal Code.

(5) Sodomy, as defined in Section 286 of the Penal Code.

(6) Oral copulation, as defined in Section 288a of the Penal Code.

(7) Penetration of a genital or anal opening by a foreign object, as defined in Section 289 of the Penal Code.

(d) The cost of printing, distribution, and filing of these statements shall be borne by the employer.

(e) On and after January 1, 1987, when a person is issued a state license or certificate to engage in a profession or occupation the members of which are required to make a report pursuant to Section 15630, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (c) to the person at the same time as it transmits the document indicating licensure or certification to the person.

(f) As an alternative to the procedure required by subdivision (e), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1987.

(g) The retention of statements required by subdivision (a), and the delivery of statements required by subdivision (b) shall be the full extent of the employer's duty pursuant to this section. The failure of any employee or other person associated with the employer to report physical abuse of elders or dependent adults or otherwise meet the requirements of this chapter shall be the sole responsibility of that person. The employer or facility shall incur no civil or other

liability for the failure of such persons to comply with the requirements of this chapter.

SEC. 6. Section 15633 of the Welfare and Institutions Code is amended to read:

15633. (a) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other person responsible for the elder or dependent adult's care, if known, the nature and extent of the elder or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse requested by the adult protective services agency.

(b) The written reports required for the reporting procedures, as defined in this chapter, shall be submitted on forms adopted by the department after consultation with representatives of the various law enforcement agencies, professional medical and nursing agencies, hospital associations, the Department of Aging, the State Department of Developmental Services, the State Department of Education, the Bureau of Medi-Cal Fraud, and the county probation or welfare departments. These forms shall be distributed by the county adult protective services agencies and the long-term care ombudsman coordinators.

(c) Information relevant to the incident of elder or dependent adult abuse may also be given to an investigator from an adult protective services agency, a local law enforcement agency, or the Bureau of Medi-Cal Fraud who is investigating the known or suspected case of elder or dependent adult abuse.

(d) The identity of all persons who report under this chapter shall be confidential and disclosed only between adult protective services agencies, long-term care ombudsman coordinators, licensing agencies, local law enforcement agencies, or the Bureau of Medi-Cal Fraud or to counsel representing an adult protective services agency, long-term care ombudsman coordinator, licensing agency, or a local law enforcement agency, or the Bureau of Medi-Cal Fraud to the district attorney in a criminal prosecution, or when persons reporting waive confidentiality, or by court order.

(e) Notwithstanding subdivision (a), persons who may report pursuant to Section 15631 are not required to include their names.

SEC. 7. Section 15635 of the Welfare and Institutions Code is amended to read:

15635. (a) Investigation of reports of known or suspected instances of abuse is the responsibility of the county adult protective services agency and the local law enforcement agency having jurisdiction over the case unless another public agency is given responsibility for investigation in that jurisdiction, except that the investigation of reports of abuse alleged to have occurred in a long-term care facility is the responsibility of the long-term care

ombudsman coordinator and, for instances of physical and fiduciary abuse, the local law enforcement agency; but for instances of potential criminal neglect in a long-term health care facility, the long-term care ombudsman coordinator and the Bureau of Medi-Cal Fraud. The investigative responsibilities set forth in this section are in addition to, not in derogation of or in substitution for, the investigative and regulatory responsibilities of licensing agencies, such as the State Department of Social Services Community Care Licensing Division and the State Department of Health Services Licensing and Certification Division, and their authorized representatives.

(b) Each county adult protective services agency shall maintain an inventory of all public and private service agencies available to assist victims of abuse, as defined by Section 15610. This inventory shall be used to refer victims in the event that the county adult protective services agency cannot resolve the immediate needs of the victim, and to serve the victim on a long-term, followup basis. The intent of this section is to acknowledge that limited funds are available to resolve all suspected cases of abuse reported to a county adult protective services agency.

SEC. 8. The sum of one hundred fifteen thousand eight hundred dollars ($115,800) is hereby appropriated from the General Fund to the Controller for allocation to the Bureau of Medi-Cal Fraud in the Attorney General's Office. Allocation of these funds to the Bureau of Medi-Cal Fraud shall be subject to federal financial participation and shall be allocated on a matching fund basis.

SEC. 9. The Attorney General's Office is responsible for carrying out the provisions of this act only to the extent that funds are appropriated or federal financial participation is available, or any combination thereof.

CHAPTER 638

An act to add Section 11011.18 to the Government Code, relating to state property.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Section 11011.18 is added to the Government Code, to read:

11011.18. (a) The Department of Transportation, by July 1, 1989, shall furnish to the Department of General Services a record of each parcel of real property, where available, or identified transportation project which it possesses except for existing highways, airspace, nonmarketable airspace, excess land inventory, or highway projects

advertised for or already under construction. The record shall be furnished by the Department of Transportation to the Department of General Services in a uniform format specified by the Department of General Services. The Department of General Services shall consult with the Department of Transportation on the development of the uniform format. The Department of Transportation shall update its descriptions of projects, reflecting any changes, by July 1 of each year. This project description shall include all of the following information:

(1) The location of the project within the state and county, including beginning and ending postmile and, if available, any other relevant project data.

(2) The total number of parcels of real property acquired for the project.

(3) The years of acquisition of the real property, if available.

(4) The aggregate purchase price of the parcels of real property acquired for the project.

(5) A description of the current uses of the property, if any, specifying the number of agricultural, commercial, residential, industrial, other rental accounts, and any projected future uses, if available.

(b) For lands and buildings held by the Department of Transportation, including office buildings, maintenance stations, equipment yards, and parking facilities, the Department of Transportation shall also provide a concise description of each major structure on the property.

(c) For marketable airspace and excess lands held by the Department of Transportation, the Department of Transportation shall provide a separate inventory for each category no later than July 1, 1989, which shall be updated annually thereafter. The inventory shall be in the format provided by the Department of Transportation.

For lands declared to be surplus by the Department of Transportation, the Department of Transportation shall provide all the data presently contained in the surplus land inventory and shall also include the estimated value of real property when available. Where an actual appraisal is available, it may be used, but is not required.

The marketable airspace inventory shall include, at a minimum, all of the following:

(1) A description of the major structures, if any, on the property.

(2) Rental revenues derived from the property.

(3) A description of current uses of the property.

(4) Projected future uses of the property, if available.

CHAPTER 639

An act to repeal Chapter 7.5 (commencing with Section 4040) of Part 1 of Division 5 of, and to add Article 6.5 (commencing with Section 26591) to Chapter 5 of Division 21 of, the Health and Safety Code, relating to health.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987]

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

SECTION 1. Chapter 7.5 (commencing with Section 4040) of Part 1 of Division 5 of the Health and Safety Code is repealed.

SEC. 2. Article 6.5 (commencing with Section 26591) is added to Chapter 5 of Division 21 of the Health and Safety Code, to read:

Article 6.5. Bottled, Vended, Hauled, and Processed Water

26591. (a) "Bottled water," means any drinking water or other water defined in Section 26594, which is placed in bottles or other containers for drinking, culinary, or other purposes involving a likelihood of the water being ingested by humans.

(b)"Water-bottling plant" means any facility in which bottled water is produced.

(c) "Water-vending machine" means any self-service device which, upon insertion of a coin, coins, or token, or upon receipt of payment by other means, dispenses servings of water in bulk, without the necessity of refilling the machine between each operation.

(d) "Water hauler" means any of the following:

(1) Any person who hauls water in bulk by truck, rail, ship, barge, or other vehicle for drinking, culinary, or other purposes involving a likelihood of the water being ingested by humans.

(2) Any person who hauls water in bulk by truck, rail, ship, barge, or other vehicle to any water-vending machine.

(3) Any person who hauls water in bulk by truck, rail, ship, barge, or other vehicle to or from any water-bottling plant or any retail water treatment plant.

"In bulk," as used in this subdivision, means containers having capacities of 25 gallons or greater.

(e) "Retail water treatment plant" means any place, other than a water-bottling plant, water-vending machine, or public water system, where water is processed or treated in any manner and is sold or given away at the treatment plant in customer's containers for drinking, culinary, or other purposes involving a likelihood of the water being ingested by humans.

(f) "Private water source" means a nonmunicipal, noncommunity-owned, privately owned source of water which

meets the requirements of an approved source for bottled water as defined in Section 129.3 of Title 21 of the Code of Federal Regulations.

(g) "Private water source operator" means any person who sells, delivers, or gives away water from a private water source to a water-bottling plant, water-vending machine, water hauler, retail water treatment plant, or to any person.

26592. (a) The department shall adopt and enforce the regulations it determines are reasonably necessary to ensure that all bottled water, vended water, water from water haulers, water from retail water treatment plants, and water from private water sources which is sold or otherwise distributed in this state is pure, wholesome, potable, and contains no inorganic chemicals or organic chemicals, including pesticides and plasticizers in concentrations which may have an adverse effect on public health and safety. The regulations shall include, but not be limited to, all of the following:

(1) Minimum standards for the sanitary production and distribution of bottled, vended, and hauled water, and water from retail water treatment plants and private water sources within this state. The standards shall include, but not be limited to, all of the following:

(A) Standards for the sanitary production, packaging, and distribution of bottled water shall not be less stringent than those standards prescribed by Part 110 and Part 129 of Title 21 of the Code of Federal Regulations.

(B) Standards to ensure that, prior to bottling, bottled water shall be subject to effective germicidal treatment by ozone, ultraviolet, or an equivalent disinfection process approved by the state department. The standards developed pursuant to this category for bottled water which contains carbon dioxide shall prescribe that sufficient compliance includes meeting the microbiological requirements described in Section 103.35 of Title 21 of the Code of Federal Regulations.

(C) Standards to ensure that dispensers for bottled water, which are furnished by the water bottler or distributor shall be delivered to the consumer's premises in a clean, sanitary condition, protected from dust or other contamination.

(D) Standards to ensure that ollas or other water-holding dispensers, both refrigerated and nonrefrigerated, shall be examined for cleanliness each time the dispenser is serviced by the representative of the distributor or bottler. When necessary, these dispensers shall be sanitized in place or returned to the bottler or distributor for cleaning or sanitizing before reuse according to the methods described in Part 129 of Title 21 of the Code of Federal Regulations.

(E) Standards for sanitary transfer of water from any source to storage or vehicle tanks, and from storage or vehicle tanks to customer owned or used storage tanks, vehicles, or other containers, or to water-vending machines, retail water treatment plants, or to

water bottling plants.

(F) Standards for water quality and for sanitation of vehicle tanks, storage tanks, and distribution systems used by water haulers.

(G) Standards for sanitation and processing of water by retail water treatment plants.

(H) Standards for protection and sanitation of private water sources.

(2) Quality standards for bottled water, mineral water, vended water, water distributed by water haulers, water from retail water treatment plants, and water from private water sources. The quality standards of bottled water, including mineral water, vended water, water distributed directly to consumers by water haulers, water from retail water treatment plants, and water distributed directly to consumers from private water sources shall not be less stringent than those standards prescribed by Section 103.35 of Title 21 of the Code of Federal Regulations, except that mineral waters shall exceed 500 milligrams per liter of total dissolved solids. The quality standards shall include all drinking water maximum contaminant levels and may include any additional standards that the department determines are reasonably necessary to protect public health and safety. In addition, bottled water shall not exceed 10 parts per billion of total trihalomethanes or five parts per billion of lead unless the department establishes a lower level by regulation. Notwithstanding any other provision of law, the quality standards shall ensure that bottled water, vended water, water from retail water treatment plants, water distributed by water haulers, and water from private water sources contain no inorganic or organic chemicals, including pesticides and plasticizers, in concentrations which may have an adverse effect on public health and safety.

Mineral water producers which bottle 5,000 gallons, or less, per week shall have until January 1, 1989, to comply with the quality standards for bottled water pursuant to this paragraph. Mineral water producers may present to the State Department of Health Services data on consumption of mineral water and the health effects of inorganic elements which may be present as listed in the bottled water quality standards of Part 103.35 of Title 21 of the Code of Federal Regulations.

(3) Polycarbonate resins manufactured after January 1, 1988, and intended for use in fabricating containers for water products defined in this article shall not contain in excess of three parts per million residual methylene chloride or in excess of 200 parts per million residual monochlorobenzene unless the department establishes a lower level by regulation. For the purpose of monitoring compliance with this section, the concentration of methylene choride and monochlorobenzene shall not exceed one part per billion in water. "Polycarbonate resins" mean the substances defined by Section 177.1580 of Title 21 of the Code of Federal Regulations except as modified by this section.

(4) Minimum standards of design, construction, and sanitation for

any water-vending machine. Those water-vending machines, other than coin-operated self-service devices, from which any operator or customer dispenses unit servings in bulk may be exempted by the department from the requirements of subparagraphs (G), (M), and (O). The minimum standard shall include, but not be limited to, all of the following:

(A) Provide that water-vending machines shall be in compliance with the construction and performance standards established by the department or by an independent authority approved by the department.

(B) Provide that all water-vending machines shall be designed and constructed to permit easy cleaning and maintenance of all exterior and interior surfaces.

(C) Provide that water-vending machines shall have all parts and surfaces which come into contact with the water constructed of approved, corrosive-resistant and nonabsorbent material capable of withstanding repeated cleaning and sanitizing treatment.

(D) Provide that water-vending machines shall have a recessed or guarded corrosion-resistant dispensing spout.

(E) Provide that water-vending machines be designed so all treatment of the vended water by distillation, ion exchange, filtration, ultraviolet light, reverse osmosis, mineral addition, or any other acceptable process is done in an effective manner.

(F) Provide that water-vending machines shall have an effective system of handling drip, spillage, and overflow of water.

(G) Provide that water-vending machines shall have a backflow prevention device approved by the department for all connections with the water supply.

(H) Provide for disinfecting vended water by ultraviolet light or other method approved by the department prior to delivery into the customer's container.

(I) Provide that water-vending machines shall be equipped with monitoring devices designed to shut down operation of the machine when the disinfection unit fails to function.

(J) Provide that water-vending machines shall be equipped with a self-closing, tight-fitting door on the vending compartment.

(K) Provide that water-vending machines shall comply with the American Water Works Association (AWWA) specifications for granular activated carbon if used in the treatment of potable water (AWWA B604-74).

(L) Provide that water-vending machines shall be maintained in a clean and sanitary condition, free from dirt and vermin.

(M) Provide that water-vending machines shall be connected to a state approved and regulated public water supply.

(N) Provide that water-vending machines shall be located in an area that can be maintained in a clean condition and in a manner that avoids insect and rodent harborage.

(O) Provide that the water-vending machine shall be equipped with monitoring devices designed to shut down the labeled purified

water delivery system if treatment of water by the machine does not result in a total dissolved solids content of less than 10 milligrams per liter in the purified water.

(5) Standards for labeling and advertising of bottled water, vended water, water distributed by a water hauler, water from a retail water treatment plant, and water from private water sources.

(6) Standards for processing bottled water through a line or lines used for any other food product.

(b) The department, upon the request of a local health officer, may authorize the local health officer to implement and enforce those provisons of this chapter which relate to water-vending machines, and retail water treatment plants under the terms and conditions specified by the department.

26592.1. Each bottler, distributor, or vendor of bottled water, each owner or operator of a water-vending machine, each water hauler, each operator of a retail water treatment plant, and each private water source operator shall obtain a bacterial analysis by an approved laboratory of water so bottled, distributed, or sold at such times as may be required by regulations of the department. The analysis shall be submitted to the department indicating whether the water is pure and wholesome. Analyses of vended water or water from retail water treatment plants shall be submitted to the local health officers if the local health officers are authorized by the department pursuant to subdivision (b) of Section 26592.

26592.2. No water shall be sold or otherwise distributed which has been produced in any water-bottling plant, vended by any water-vending machine, hauled by any water hauler, processed by any retail water treatment plant or distributed by any private water source operator which does not at least satisfy the minimum standards adopted by the department for the production and quality of the water.

26592.3. No water-vending machine shall be used in this state which does not at least satisfy the minimum standards adopted by the department.

26592.4. The department shall require that each water-vending machine, retail water treatment plant, water hauler vehicle and facility, and private water source be maintained in a clean and sanitary condition at all times.

26593. (a) No person shall operate a water-bottling plant, operate a private water source, or be a water hauler in this state except pursuant to a license issued by the department. If a person has a valid water-bottling plant license issued by the department, additional licenses for a private water source operator or for a water hauler based and operating at the same address, or for an out-of-state bottled water distributor shall not be required.

(b) No person shall own or operate a water vending machine or a retail water treatment plant except pursuant to a license issued by the department or to a permit issued by a local health department.

26593.1. No bottled water produced in an out-of-state bottling

department may require any bottler, distributor, or vendor of bottled water, any owner or operator of a water-vending machine, any water hauler, any retail water treatment plant operator, any private water source operator, or any applicant for a license to test and submit results to the department for any substance, including organic chemical contaminants, at any time which the department believes the substance may be present in the water source and threaten the public health and safety.

26593.8. (a) Upon a determination by the department that a particular water source is subject to potential contamination, the department shall notify the bottler, distributor, or vendor of bottled water, the owner and operator of any water-vending machine, any water hauler, any retail water treatment plant operator, or any private water source operator of the specific contaminants or class of contaminants which pose a potential health risk.

(b) Within 90 days after notification by the department, the bottler, distributor, vendor of bottled water, the owner and operator of any water-vending machine, any water hauler, any retail water treatment plant operator, or any private water source operator shall conduct an analysis of the water source and submit the results of the analysis to the department.

(c) If evidence of contamination is found, the department may, by order, require the bottler, distributor, vendor of bottled water, or the owner and operator of any water-vending machine, any water hauler, any retail water treatment plant operator, or any private water source operator to conduct a source and product water analysis for the contaminants of concern in accordance with conditions specified by the department. The water analysis shall be conducted and reported on an annual basis, unless the department finds that reasonable action requires either more frequent or less frequent analysis.

(d) The department may, by order, require the bottler, distributor, vendor of bottled water, the owner and operator of any water-vending machine, any water hauler, any retail water treatment plant operator, or any private water source operator to reduce or eliminate the concentration of any chemical which the department determines may have an adverse effect on public health and safety. Until an enforceable standard has been established for a chemical which may have an adverse effect on human health, the department may require treatment techniques to reduce the concentration of the contaminants which require treatment necessary, in the department's judgment, to prevent known or anticipated adverse effects on the health of persons. The treatment system shall be designed to meet criteria designated by the department or by an independent authority approved by the department.

(e) The department may grant variances from the requirements of subdivision (d), if the bottler, distributor, vendor of bottled water, the owner and operator of any water-vending machine, any water

hauler, any retail water treatment plant operator, or any private water source operator demonstrates either of the following:

(1) That the prescribed treatment technique is not necessary to protect the health of consumers because its raw water source is not subject to, nor is it likely to be subject to, significant chemical contamination.

(2) An alternative treatment technique is at least as efficient in lowering the level of contaminants to be controlled.

26593.9. All testing of bottled water, bottled water sources, water distributed by water haulers, water from retail water treatment plants, and water from vending machines shall be done by laboratories approved by the department, laboratories certified by the United States Environmental Protection Agency, laboratories certified by the primary enforcement authority in states which have been granted primacy by the United States Environmental Protection Agency, or laboratories certified (accredited) by a third-party organization acceptable to a primacy state.

26594. (a) Each container of bottled water sold in this state, each water-vending machine, and each retail water treatment plant located in this state shall be clearly labeled in an easily readable format. Bottled water may be labeled "drinking water," notwithstanding the source or characteristics of the water, only if it is processed pursuant to the Food and Drug Administration Good Manufacturing Practices contained in Section 103.35 and Parts 110 and 129 of Title 21 of the Code of Federal Regulations, Sections 12235 to 12285, inclusive, of Title 17 of the California Administrative Code, and any other requirements established by the department pursuant to Sections 26593.5, 26593.6, and 26593.7. Any vended water and any water from retail water treatment plants may be labeled "drinking water," notwithstanding the source or characteristics of the water, only if it is processed pursuant to Article 10 (commencing with Section 27650) of Chapter 4 of Division 22 and any other requirements established by the department pursuant to Sections 26593.5, 26593.6, and 26593.7.

(b) In addition to the requirements of subdivision (a), if a bottler, distributor, water hauler, retail water treatment plant operator, private water source operator, or vending machine operator provides information in the labeling or advertising of bottled water or vended water, stating or implying it is the product of a specific source of water or treated in a specific manner, the source or treatment shall be clearly labeled in an easily readable format. In order to be so labeled, the source or treatment shall conform to the following criteria:

(1) "Artesian well water" means water from a well tapping an aquifer in which the water level will stand above the bottom of the confining bed of the aquifer, and in which the hydraulic pressure of the water in the aquifer is greater than the force of gravity. Artesian well water shall not be altered by the addition or deletion of minerals or by blending it with water from a nonartesian well water source,

except that artesian well water may be filtered and shall be treated with ozone or an equivalent disinfection process. Any water which satisfied the designation of this paragraph may be labeled "artesian well water."

(2) "Fluoridated water" means water containing naturally occurring or added fluoride. The label shall specify whether it is naturally occurring or added fluoride. Any water which meets the designation of this paragraph shall contain not less than 1.0 milligrams per liter fluoridization and otherwise comply with the Food and Drug Administration quality standards set forth in Section 103.35(d)(2) of Title 21 of the Code of Federal Regulations.

(3) "Mineral water" means bottled water or vended water containing more than 500 milligrams per liter of total dissolved solids and originating entirely from an underground source, which may be a well, artesian well, or spring. Bottled or vended mineral water may be derived from a natural orifice or from a bore hole adjacent to the natural orifice. If it is derived from a natural orifice or from a bore hole adjacent to the natural orifice, the water shall be from the same underground stratum and be of the same quality and composition as the water derived from the natural orifice without external force. Mineral water may not be altered by the addition or deletion of minerals or by blending it with water from another source, except that mineral water may be filtered and shall be treated with ozone or an equivalent disinfection process approved by the department and shall be treated to reduce the concentrations of any naturally occurring substance which exceeds the bottled water safety standards established by the department. Mineral water may be collected and transported by pipes, tunnels, trucks, or similar devices. Any water which meets the criteria of this paragraph may also be labeled "natural mineral water."

(A) Mineral water which contains carbon dioxide as it emerges from the source and is bottled directly with its entrapped gas, or, the gas is mechanically separated from the water and later reintroduced into the water at the time of bottling shall be labeled "naturally carbonated" or "naturally sparkling."

(B) Mineral water which contains carbon dioxide, other than that naturally occurring in the source product, shall be labeled with the words "carbonation added" or "carbon dioxide added" when the carbonation is obtained from a natural or manufactured source.

(4) "Mineralized water" means bottled or vended water which meets the requirements of "mineral water" except that the water contains added minerals.

(5) "Natural water" means bottled or vended spring, artesian well, or well water which is unmodified by mineral addition or deletion, except "natural water" may be filtered and shall be sanitized with ozone or an equivalent disinfection process and treated to reduce the concentration of any substance which exceeds safety standards established by the state department.

(6) "Naturally sparkling water" means bottled water or vended

water with a carbon dioxide content from the same source as the water. "Sparkling," "carbonated," or "carbonation added" means bottled water or vended water which contains carbon dioxide.

(7) "Purified water" means water produced by distillation, deionization, reverse osmosis, or other method meeting the definition of purified water in the 21st edition of the United States Pharmacopeia. Water which meets the designation of this paragraph, and is vaporized, then condensed, may be labeled "distilled water."

(8) "Spring water" means water which issues by natural forces out of the earth at a particular place. Bottled or vended spring water may be derived from the natural orifice or from a bore hole adjacent to the natural orifice. If it is derived from the natural orifice by external force or from a bore hole adjacent to the natural orifice, the water shall be from the same underground stratum and be of the same quality and composition as the water derived from the natural orifice without external force. Spring water may not be altered by the addition or deletion of minerals or by blending it with water from a nonspring water source, except that spring water may be filtered and shall be treated with ozone or an equivalent disinfection process. Spring water may be collected and transported by pipes, tunnels, trucks, or similar devices.

(9) "Well water" means water from a hole bored into the ground which taps the water of an aquifer, except that well water may be filtered and shall be treated with ozone or an equivalent disinfection process. Well water may not be altered by the addition or deletion of minerals or by blending it with water from a nonwell water source.

(10) Notwithstanding any other provision of this section, water from a public water system which is unprocessed by the bottler or vendor shall be labeled as "unprocessed public drinking waters."

26594.2. Except as provided in paragragh (3) of subdivision (b) of Section 26594, any bottled water or vended water, the quality of which is below the quality required by this article, shall be labeled with a statement of substandard quality, as prescribed by Section 103.35 of Title 21 of the Code of Federal Regulations.

26594.3. Any bottler, distributor, vendor of bottled water, or owner or operator of any water-vending machine, whose corporate name or trademark contains the words "spring" or "springs," or any derivative of either of these words, or "well," "artesion well," or "natural" shall label each bottle or vending machine with the source of the water in typeface at least equal to the size of the typeface of the corporate name or trademark, if the source of the bottled or vended water is different from the source stated in the corporate name or trademark.

26594.4. (a) A bottled water, as defined in Section 26594, with natural or added carbonation, may be prepared with added flavors, extracts, essences, or fruit juice concentrates derived from a spice or fruit and comprising less than 1 percent by weight of the final product. The final product shall contain no sweeteners, or additives other than the flavors, extracts, essences, or fruit juice concentrates

and carbon dioxide and shall be designated on labels and in advertising as follows:

(1) The common or usual name of the characterizing flavor shall accompany the designation of the bottled water product type as defined in subdivision (b) of Section 26594.

(2) The product may be designated as "natural" only if it meets the requirements for the designation as defined in paragraphs (5) and (6) of subdivision (b) of Section 26594, and naturally derived flavors, extracts, or essences are used.

(b) Products labeled pursuant to this section shall comply with all other provisions of this article. Products with one type or one source of bottled water that are labeled pursuant to this section shall not be blended with water that is not bottled water or that is of another bottled water type.

26594.5. The department, prior to issuing a license, shall review all labels prepared pursuant to this article, and may require any changes in order to comply with the provisions of this article.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 640

An act to add Section 11174.3 to the Penal Code, relating to child abuse.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987.]

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

SECTION 1. The Legislature finds and declares that a number of victims of child abuse must be interviewed by representatives of child protective agencies during school hours, on school premises, regarding suspected child abuse. It is essential to minimize the trauma to the child attendant with such an interview and to thereby increase the likelihood of ascertaining the true facts in the case. Accordingly, it is desirable that the child should have the opportunity to have present at the interview an adult who is a member of the staff of the school with whom the child has a comfortable relationship.

SEC. 2. Section 11174.3 is added to the Penal Code, to read:

11174.3. (a) Whenever a representative of a child protective agency deems it necessary, a suspected victim of child abuse may be interviewed during school hours, on school premises, concerning a report of suspected child abuse that occurred within the child's

home. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the child protective agency shall inform the child of that right prior to the interview. The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible; however, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district, and each child protective agency shall notify each of its employees who participate in the investigation of reports of child abuse, of the requirements of this section.

SEC. 3. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 641

An act to amend Sections 69948, 70054.3, and 70056.7 of, and to add Section 70045.2 to, the Government Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Section 69948 of the Government Code is amended to read:

69948. (a) The fee for reporting testimony and proceedings in

contested cases is fifty-five dollars ($55) a day, or any fractional part thereof.

(b) In San Joaquin County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(c) In Madera County, the board of supervisors may, by ordinance or resolution, prescribe a higher rate of compensation for superior court reporters.

(d) In Kings County, the fee for reporting testimony and proceedings in contested cases is one hundred dollars ($100) a day, or any fractional part thereof.

(e) In Mariposa County, the fee for reporting testimony and proceedings in contested cases is ninety-five dollars ($95) a day, or any fractional part thereof.

(f) In Siskiyou County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(g) In Yuba County, the fee for reporting testimony and proceedings in contested cases is ninety dollars ($90) per day, or any fractional part thereof.

(h) In Butte County, pro tempore reporters shall receive a fee of seventy-five dollars ($75) a day, or any fractional part thereof, for reporting testimony and proceedings in contested cases.

(i) In Sutter County, except as may otherwise be provided in Section 74839, the fee for reporting testimony and proceedings in contested cases is one hundred ten dollars ($110) per day, or any fractional part thereof.

(j) In Napa County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(k) In Tehama County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(*l*) In Monterey County, the fee for reporting testimony and proceedings in contested cases in any court is seventy-five dollars ($75) a day or any fractional part thereof.

(m) In Nevada County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(n) In Calaveras County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof; provided that the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(o) In Placer County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(p) In Sierra County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(q) In Trinity County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(r) In Humboldt County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof.

(s) In Del Norte County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof.

(t) In Alpine County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(u) In Glenn County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(v) In Colusa County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof.

(w) In Shasta County, the board of supervisors may prescribe a higher rate of compensation for superior court reporters.

(x) In Solano County, the fee for reporting testimony and proceedings in contested cases is ninety dollars ($90) per day, or fifty-five dollars ($55) per half day or fractional part thereof; provided that the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(y) In Inyo County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(z) In Mono County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

SEC. 2. Section 70045.2 is added to the Government Code, to read:

70045.2. Notwithstanding Section 70045, in Modoc County each regular official court reporter shall receive an annual salary to be determined by ordinance by the board of supervisors, payable in monthly installments out of the salary fund of the county, for the reporting and taking notes in criminal cases and juvenile court cases in the superior court, and in preliminary examination of those accused of crime before magistrates, and of proceedings before the grand jury and at coroner's inquests when requested by the coroner.

In Modoc County, reporters pro tempore shall be paid a per diem, as set by law, and shall receive from the county their necessary traveling and other expenses when called from other counties. However, a reporter pro tempore shall be paid a per diem or expenses by the county only when the regular official court reporters are occupied in the superior court, or at preliminary examinations, grand jury hearings, or coroner's inquests.

For all reporter's services in Modoc County in civil cases as set forth in Article 9 (commencing with Section 69941) of Chapter 5 of Title 8, litigants shall pay such fees as are provided by law to the county clerk for deposit in the county general fund.

The Board of Supervisors of Modoc County may provide court reporters with equipment for the performance of their duties.

SEC. 3. Section 70054.3 of the Government Code is amended to read:

70054.3. (a) A reporter's filing fee of ten dollars ($10) shall be paid in actions and proceedings as specified in Section 68090.5, in the Superior Courts of El Dorado and Nevada Counties.

(b) In Nevada County:

(1) In addition to any fee otherwise required, in civil cases that last longer than one judicial day, a fee equal to one-half the full per diem rate for official reporters pro tempore shall be charged per one-half day of services to the parties, for the services of an official reporter for the second and each succeeding day a reporter is required.

(2) All parties shall deposit their pro rata share of such fees with the clerk at the beginning of the second and each succeeding day's court session.

(3) All fees under this subdivision shall be taxed as costs.

(4) For the purposes of this subdivision, "one-half day" means any period of judicial time during either the morning or the afternoon court session.

SEC. 4. Section 70056.7 of the Government Code is amended to read:

70056.7. Notwithstanding any other provision of law to the contrary, the following provisions shall be applicable to the official superior court reporters in Monterey County:

(a) Regular official court reporters shall report all criminal and civil proceedings in their respective courts and report all grand jury proceedings. When not engaged in the performance of other duties imposed on him or her by law and when approved by the presiding judge, each reporter shall render such assistance as may be required in any other court of the county to which he or she may be assigned. During hours in which the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of regular duties and shall not engage in or solicit any other employment in their professional capacity.

(b) Each regular official court reporter shall be paid a salary to be established by the Monterey County Board of Supervisors upon the joint recommendation of the county administrative officer and the judges of the superior court.

(c) A regular official court reporter shall serve at the pleasure of the judge of the court for which appointed but shall receive the same vacation, sick leave, retirement, and other financial or monetary benefits as are now, or may be hereafter provided for the classification of superior court clerk. The benefits include the right to participate in any group accident, group health, or group life insurance plan adopted for and made available to the classification of superior court clerk.

For the purposes of retirement under the Public Employees' Retirement System, the salary provided for in subdivision (b) shall be deemed the entire salary for each court reporter.

(d) Judges of the superior court may appoint as many official superior court reporters pro tempore as the business of the court

requires. They shall be unsalaried but shall receive a per diem at a rate to be established by joint action of the board of supervisors and a majority of the judges of the superior court.

(e) In Monterey County the fee required by Section 70053 shall be fourteen dollars ($14).

(f) In addition to any fee otherwise required in civil cases that last longer than four judicial days, a fee equal to the per diem rate for official reporters pro tempore shall be charged to the parties for the service of an official reporter for the fifth and each successive day a reporter is required. The fee specified herein shall be deposited in the general fund of the county.

(g) In addition to any fee otherwise required, in a civil case in which the court orders a daily transcript, necessitating the services of two stenographic reporters, the party requesting the daily transcript shall pay a fee per day equal to the per diem rate for official reporters pro tempore for the services of the second reporter for the first and each successive day. The fee specified herein shall be deposited in the general fund of the county.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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.

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 ensure adequate court reporter services in Sutter, Modoc, Nevada, and Monterey Counties, it is necessary that this act take effect immediately.

CHAPTER 642

An act to add Section 1156 to the Government Code, relating to state employees.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Section 1156 is added to the Government Code, to read:

1156. (a) Any nonrepresented employee who is participating in a flexible benefits program may elect to receive one or more benefits that qualify to be excluded from gross income in lieu of a portion of his or her salary.

(b) For purposes of this section, a "nonrepresented employee"

means any of the following:

(1) An employee excluded from the definition of "state employee" in subdivision (c) of Section 3513.

(2) A "managerial employee" as defined in subdivision (e) of Section 3513.

(3) A "confidential employee" as defined in subdivision (f) of Section 3513 and subdivision (e) of Section 3562.

(4) A "supervisory employee" as defined in Sections 3522.1 and 3580.3.

(5) A nonelected officer or employee of the State of California in the executive or judicial branch of government who is not a state civil service employee pursuant to Part 2 (commencing with Section 18500) of Division 5 of Title 2.

(c) Any nonrepresented employee participating in the flexible benefits program shall be subject to federal laws and implementing regulations of the Department of Personnel Administration which affects the flexible benefit program throughout the period of the employee's enrollment.

(d) Unless the trustee or the administrator of the state's flexible benefit program is the Controller or another state officer, that program shall be administered in compliance with the federal Employee Retirement Income Security Act of 1974 (ERISA).

CHAPTER 643

An act to amend Section 769 of the Insurance Code, relating to insurance.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987]

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

SECTION 1. Section 769 of the Insurance Code is amended to read:

769. (a) After a written agency contract has been in effect for at least one year, it shall not be terminated or amended by an insurer, except by mutual agreement, unless 120 days advance written notice has been given by the insurer to the agent.

(b) The advance notice required by this section does not apply if the agent has done any of the following:

(1) Exceeded his or her binding authority under the agency contract.

(2) Violated the written underwriting rules or regulations of the insurer, a copy of which has been provided to the agent, which misleads the insurer concerning the nature or extent of a risk.

(3) Failed to comply with the fiduciary requirements set forth in Section 1733, 1734, 1734.5, or 1735.

(4) Failed, either within 10 days after written notice upon failure to remit funds within the time limits set forth in the agency contract or within 30 days after written demand where the agency contract does not set forth such time limits, to remit funds due and owing to the insurer.

(5) Had his or her agency license suspended or revoked by the commissioner.

(6) Engaged in fraudulent acts affecting his or her relationship with the insurer or its insureds.

(c) When an agent's authority to represent an insurer is terminated as provided by this section, the rights, duties, and obligations set forth in the terminated agency contract of the agent having property rights in renewals shall continue solely with respect to policies then in force or renewed as provided by this section until those policies are canceled in accordance with law, placed by the agent with another insurer, or have expired. The agent's authority during the period following notice of termination of his or her agency contract shall be governed by the written agency contract between the agent and the insurer, except that, after the receipt of the notice of termination, the agent shall not bind new risks on behalf of the insurer, renew policies except as permitted by this section, or otherwise increase the obligation of the insurer, without the express approval of the insurer or in accordance with the terms of an existing policy.

(d) If a terminated agent is unable, after making a good faith effort, to place existing policies with another insurer, the insurer then insuring the risk shall, at the agent's request, renew any insurance contract written by the agent for the insurer for one policy term or a period of one year, whichever is shorter. The renewal shall be at the insurer's premium rates in effect on the date of renewal and at prevailing commission rates for that class or line of business in effect on the date of renewal for agents whose contracts are not terminated.

(e) Notwithstanding any other provision of this section, no insurer shall be required to renew any policy of insurance pursuant to the provisions of this section if any of the following apply:

(1) The agent is no longer the agent of record with respect to the policy.

(2) The agent has died or has become unable to conduct his or her business affairs.

(3) The agent has failed, either within 10 days after written demand upon failure to remit funds within the time limits set forth in the agency contract or within 30 days after written demand where the agency contract does not set forth such time limits, to remit funds due and owing to the insurer.

(4) The agent has failed to follow the written instructions of the insurer, a copy of which has been provided to the agent, generally applicable to the renewal of policies.

(5) The commissioner has determined that the renewal of the

policy would threaten the solvency of the insurer.

(6) The insurer suffers the withdrawal of reinsurance covering all or part of the risk and this withdrawal of reinsurance is likely to threaten, in the opinion of the commissioner, the financial integrity or solvency of the insurer.

(7) The insurer has withdrawn from the State of California in accordance with Sections 1070 to 1076, inclusive.

(8) There has been a material change in the risk to be insured under the policy.

(f) This section shall not apply to a life insurer, an agent of a life insurer, a disability insurer, a nonprofit hospital service plan, an agent of a disability insurer or nonprofit hospital service plan, an agent who is the employee of an insurer, or to an agent who, by contractual agreement either represents only one insurer or group of affiliated insurers or who is required by contract to submit risks to a specified insurer or group of affiliated insurers prior to submitting them to other insurers.

(g) This section does not apply to any management contract of a managing general agent as defined in Section 1735, but it shall continue to apply to any agency contract of a managing general agent or any portion of a management contract authorizing a managing general agent to act in his or her capacity as an insurance agent as defined in Section 1621.

(h) This section shall apply to written agency contracts becoming effective on or after the effective date of this section. This section also applies to any written agency contract amended after the January 1, 1988.

CHAPTER 644

An act to amend Sections 1269b and 1275 of the Penal Code, relating to bail.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987]

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

SECTION 1. Section 1269b of the Penal Code is amended to read:

1269b. (a) The officer in charge of a jail where an arrested person is held in custody, an officer of a sheriff's department or police department of a city who is in charge of a jail or employed at a fixed police or sheriff's facility and is acting under an agreement with the agency which keeps the jail wherein an arrested person is held in custody, an employee of a sheriff's department or police department of a city who is assigned by such department to collect bail, the clerk of the justice or municipal court of the judicial district in which the offense was alleged to have been committed, and the clerk of the

superior court in which the case against the defendant is pending shall have authority to approve and accept bail in the amount fixed by the warrant of arrest or schedule of bail or order admitting to bail in cash or surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code, to issue and sign an order for the release of the arrested person, and to set a time and place for the appearance of the arrested person before the appropriate court and give notice thereof.

(b) If a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information the bail shall be in the amount fixed by the judge at the time of such appearance; if no appearance has been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant must appear, previously fixed and approved as provided in subdivisions (c) and (d).

(c) It is the duty of the superior, municipal and justice court judges in each county to prepare, adopt, and to annually revise, by a majority vote, at a meeting called by the presiding judge of the superior court of the county, a uniform countywide schedule of bail for all bailable felony offenses.

In adopting a uniform countywide schedule of bail for all bailable offenses the judges shall consider the seriousness of the offense charged. In considering the seriousness of the offense charged the judges shall assign an additional amount of required bail for each aggravating or enhancing factor chargeable in the complaint, including, but not limited to, additional bail for charges alleging facts which would bring a person within any of the following sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9, 667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, or 12022.9 of the Penal Code, or Section 11356.5, 11370.2, or 11370.4 of the Health and Safety Code.

In considering offenses wherein a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code is alleged, the judge shall assign an additional amount of required bail for offenses involving large quantities of controlled substances.

(d) It is the duty of the municipal and justice court judges in each county to prepare, adopt, and annually revise, subject to Section 40310 of the Vehicle Code, by a majority vote, at a meeting called by the presiding judge of the municipal court or the senior judge of the justice court at each county seat, a uniform, countywide schedule of bail for all misdemeanor and infraction offenses.

(e) Each countywide bail schedule shall contain a list of the offenses and the amounts of bail applicable thereto as the judges determine to be appropriate. If the schedules do not list all offenses specifically, they shall contain a general clause for designated amounts of bail as the judges of the county determine to be

appropriate for all the offenses not specifically listed in the schedules. A copy of the countywide bail schedule shall be sent to the officer in charge of the county jail, to the officer in charge of each city jail within the county, to each superior, municipal and justice court judge and commissioner in the county, and to the Judicial Council.

(f) Upon posting such bail the defendant or arrested person shall be discharged from custody as to the offense on which the bail is posted.

All money and surety bonds so deposited with an officer authorized to receive bail shall be transmitted immediately to the judge or clerk of the court by which the order was made or warrant issued or bail schedule fixed. If, in the case of felonies, an indictment is filed, the judge or clerk of the court shall transmit all such money and surety bonds to the county clerk.

(g) If a defendant or arrested person so released fails to appear at the time and in the court so ordered upon his release from custody, the provisions of Sections 1305 and 1306 shall apply.

SEC. 2. Section 1275 of the Penal Code is amended to read:

1275. In setting, reducing, or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing of the case. The public safety shall be the primary consideration. No bail bond shall be accepted unless the judge or magistrate be convinced that no portion of the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained by the defendant.

In considering the seriousness of the offense charged, the judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant.

In considering offenses wherein a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code is alleged, the judge or magistrate shall consider the alleged amounts of controlled substances involved in the commission of the offense.

CHAPTER 645

An act to add Section 12804.7 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Section 12804.7 is added to the Vehicle Code, to read:

12804.7. Notwithstanding subdivision (b) of Section 12804, class 3 also includes any two-axle motortruck or implement of husbandry weighing 4,000 pounds or more unladen when towing an implement of husbandry as specified in subdivision (n) of Section 36005, except that those vehicles shall not be operated in excess of 25 miles per hour on the highways and for not more than 25 miles on the highway from their point of origin.

CHAPTER 646

An act to amend Sections 32909, 35071, 35072, 35225, 38511, 38512, 38731, 61932, and 61935 of, to amend the heading of Article 5 (commencing with Section 35071) of Chapter 12 of Part 1 of Division 15 of, to add Section 38737 to, to add Chapter 9 (commencing with Section 39701) to Part 3 of Division 15 of, to repeal Section 32517 of, and to repeal Article 7 (commencing with Section 38291), Article 8 (commencing with Section 38311), Article 9 (commencing with Section 38321), Article 10 (commencing with Section 38341), Article 10.5 (commencing with Section 38350), Article 15 (commencing with Section 38481), Article 34 (commencing with Section 38821), and Article 39 (commencing with Section 38891) of Chapter 5 of Part 3 of Division 15 of, the Food and Agricultural Code, relating to dairy products, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987]

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

SECTION 1. Section 32517 of the Food and Agricultural Code is repealed.

SEC. 2. Section 32909 of the Food and Agricultural Code is amended to read:

32909. It is unlawful for any person to produce, manufacture, prepare for sale, or sell any of the following:

(a) Any milk, cream, or other product of milk to which has been added, or that contains, any compound of boron, salicylic acid, formaldehyde, or other preservative.

(b) Any milk or product of milk, except as otherwise provided in this division, to which has been added any coloring matter or any gelatin or other substance.

(c) This section does not prohibit the use of harmless coloring matter and common salt (chloride of sodium) in butter and cheese, the use of gelatin, sweetening, eggs or egg products, harmless coloring or flavoring, or edible stabilizer in the manufacture of ice cream, ice milk, sherbet, or edible stabilizer or citric acid in the creaming mixture for cottage cheese, or lowfat cottage cheese, or the use of alkalies approved by the director, in the manufacture of butter, or the adjustment of the acidity of ice cream mix within the limits designated by the director.

(d) Mixed tocopherols (vitamin E) or ascorbic palmitate (vitamin C), as approved by the director, may be added to UHT cream, UHT whipped cream, UHT cream topping, whipped cream, or cream topping, and buttermilk to protect and enhance the flavor of these products.

SEC. 3. The heading of Article 5 (commencing with Section 35071) of Chapter 12 of Part 1 of Division 15 of the Food and Agricultural Code is amended to read:

Article 5. Modified Milk, Modified UHT Milk, and Modified UHT Cream Licenses

SEC. 4. Section 35071 of the Food and Agricultural Code is amended to read:

35071. A person shall not engage in the business of manufacturing, preparing, or processing modified UHT milk, modified UHT cream or modified milk unless, in addition to the milk products plant license, the person has obtained and holds a modified milk license, modified UHT milk license, or a modified UHT cream license, as the case may be, from the director.

Separate licenses are required for modified milk, modified UHT milk, and modified UHT cream.

SEC. 5. Section 35072 of the Food and Agricultural Code is amended to read:

35072. Upon receipt of an application for a modified milk license, modified UHT milk license, or modified UHT cream license, the director shall investigate the equipment and sanitary conditions of the place where the modified milk, modified UHT milk, or modified UHT cream is to be manufactured or prepared, and provide the applicant with a copy of the laws of the state which pertain to the product. If the condition of the place is found to be satisfactory, and the special fee for the license which is prescribed by Section 35225 is paid by the applicant, the license shall be issued. A modified milk license, modified UHT milk license, or modified UHT cream license

shall normally expire on the 31st day of December of each year.

SEC. 6. Section 35225 of the Food and Agricultural Code is amended to read:

35225. The special fee for a modified milk license, modified UHT milk license, or modified UHT cream license is one hundred dollars ($100).

SEC. 7. Article 7 (commencing with Section 38291) of Chapter 5 of Part 3 of Division 15 of the Food and Agricultural Code is repealed.

SEC. 8. Article 8 (commencing with Section 38311) of Chapter 5 of Part 3 of Division 15 of the Food and Agricultural Code is repealed.

SEC. 9. Article 9 (commencing with Section 38321) of Chapter 5 of Part 3 of Division 15 of the Food and Agricultural Code is repealed.

SEC. 10. Article 10 (commencing with Section 38341) of Chapter 5 of Part 3 of Division 15 of the Food and Agricultural Code is repealed.

SEC. 11. Article 10.5 (commencing with Section 38350) of Chapter 5 of Part 3 of Division 15 of the Food and Agricultural Code is repealed.

SEC. 12. Article 15 (commencing with Section 38481) of Chapter 5 of Part 3 of Division 15 of the Food and Agricultural Code is repealed.

SEC. 13. Section 38511 of the Food and Agricultural Code is amended to read:

38511. Milk drink is the product which is made from milk drink mix or UHT milk drink mix and which contains not less than 3.5 percent of milk fat nor more than 75,000 bacteria per gram.

SEC. 14. Section 38512 of the Food and Agricultural Code is amended to read:

38512. No milk or milk products, except market milk, market skim milk, or market cream, shall be combined with, or added to, milk drink mix or UHT milk drink mix in the freezing device in the making of milk drinks.

SEC. 15. Section 38731 of the Food and Agricultural Code is amended to read:

38731. Market milk or market milk combined with nonfat milk from market milk, with or without added milk solids which are derived from market milk, flavoring, nutritive carbohydrate sweeteners, color additives, or seasoning, which is certified raw milk or has been pasteurized and afterwards fermented by a characterizing bacterial culture that contains one or more strains of Lactobacillus bulgaricus (including yogurt strains), Streptococcus thermophilus, and Lactobacillus acidophilus may be sold as yogurt, lowfat yogurt, nonfat yogurt, mazun, or any names that may be characteristic for the product and approved by the director. The product may contain harmless edible stabilizer not to exceed 0.6 percent. It shall contain no more than 10 coliform bacteria per gram and shall be free of molds, yeasts, other fungi, and other objectionable bacteria which may impair the quality of the product. Supplemental calcium, in a form approved by the director, may be

added to yogurt provided that the product contains no more than 100 percent of the recommended daily allowance for calcium, as prescribed by the federal Food and Drug Administration, Department of Health and Human Services, per serving of at least six ounces.

SEC. 15.2. Section 38737 is added to the Food and Agricultural Code, to read:

38737. The phrase "calcium fortified" or "with added calcium" shall accompany the name of the yogurt product wherever the name appears and shall be set forth on the principal display panel or panels of the label in letters not less than one-half the height of the letters used in the name if the product contains at least 25 percent more calcium from any approved source than the comparable form of the product without added calcium, as measured against standards adopted by the director.

SEC. 15.4. Article 34 (commencing with Section 38821) of Chapter 5 of Part 3 of Division 15 of the Food and Agricultural Code is repealed.

SEC. 16. Article 39 (commencing with Section 38891) of Chapter 5 of Part 3 of Division 15 of the Food and Agricultural Code is repealed.

SEC. 17. Chapter 9 (commencing with Section 39701) is added to Part 3 of Division 15 of the Food and Agricultural Code, to read:

CHAPTER 9. UHT MILK PRODUCTS

Article 1. General Provisions

39701. "UHT" when used to describe a dairy product or a product resembling a milk product means that the product has been hermetically sealed in a container and so thermally processed in conformance with Section 113 of Title 21 of the Code of Federal Regulations and the provisions of the Grade A Pasteurized Milk Ordinance as to render the product free of microorganisms capable of reproducing in the product under normal nonrefrigeration conditions of storage and distribution. The product shall be free of viable microorganisms, including spores, of public health significance. UHT products, as defined in this chapter, shall meet the definition for aseptically processed milk and milk products in the Grade A Pasteurized Milk Ordinance.

39702. (a) All products defined in this chapter shall be labeled in accordance with the applicable general labeling requirements of the Grade A Pasteurized Milk Ordinance for aseptically processed milk and milk products.

(b) Except as otherwise provided in this section, all products defined in this chapter shall conform to the labeling requirements for market milk and applicable labeling provisions of the Code of Federal Regulations.

Article 2. UHT Milk and Cream

39711. UHT milk and UHT cream is market milk or market cream processed and packaged pursuant to Section 39701. An edible stabilizer not to exceed one-half of 1 percent by weight may be added to UHT milk or UHT cream.

39712. UHT milk or UHT cream shall be made from market milk or market cream which meets all the requirements of this division for the respective class or grade of milk and cream which is used. However, the milk or cream need not be cooled if it has been demonstrated to the satisfaction of the director that this cooling is not required for the proper processing of the product.

39713. UHT milk shall contain not less than 3.25 percent milk fat and not less than 8.25 percent milk solids-not-fat.

39714. UHT cream shall contain not less than 18 percent milk fat.

39715. UHT milk or UHT cream which has been altered in composition to conform to special nutritional requirements or special dietary purposes shall include "modified" in its name. If the alteration is due to the use of additives, the additives shall be approved by the director and shall be stated on the label.

Article 3. UHT Lowfat Milk

39721. UHT lowfat milk is market milk, evaporated market milk, condensed market milk, or dried market milk, or any combination thereof, processed and packaged pursuant to Section 39701. It may contain harmless edible stabilizers which do not exceed one-half of 1 percent by weight. UHT lowfat milk shall be homogenized.

39722. UHT lowfat milk shall contain not less than 1 percent milk fat nor more than 2.1 percent milk fat and not less than 8.25 percent milk solids-not-fat.

39723. Except as otherwise provided in this article, UHT lowfat milk shall meet all the standards and requirements which are specified in this division for market milk.

Article 4. UHT Nonfat Milk

39731. UHT nonfat milk is the product which results from the complete or partial removal of milk fat from market milk. It shall be processed and packaged pursuant to Section 39701. It may contain harmless edible stabilizers which do not exceed one-half of 1 percent by weight. UHT nonfat milk shall be homogenized. The product may be called "nonfat milk" or "skim milk."

39732. UHT nonfat milk shall contain not more than one-fourth of 1 percent of milk fat and not less than 8.25 percent milk solids-not-fat.

39733. Except as otherwise provided in this article, UHT nonfat milk shall meet all the standards and requirements which are specified in this division for market milk.

Article 5. UHT Flavored Milk

39741. UHT flavored milk is market milk, evaporated market milk, condensed market milk, or dried market milk, or any combination of them, which contains harmless sweetening, chocolate, chocolate syrup, or other harmless syrup or flavoring, or any combination of these syrups or flavorings, and harmless edible stabilizers which do not exceed one-half of 1 percent by weight. It is homogenized and processed and packaged pursuant to Section 39701.

39742. UHT flavored milk shall contain not less than 3 percent milk fat and not less than 16½ percent total solids.

Article 6. UHT Flavored Cream

39751. UHT flavored cream is market cream to which nonfat dry milk solids derived from market milk have been added, which contains harmless flavoring or syrup, or any combination of harmless flavorings or syrups, and harmless edible stabilizers which do not exceed one-half of 1 percent by weight and harmless stabilizing salts. It is homogenized and processed and packaged pursuant to Section 39701.

39752. UHT flavored cream shall contain not less than 20 percent milk fat.

Article 7. UHT Flavored Lowfat Milk

39761. UHT flavored lowfat milk is market milk, evaporated market milk, condensed market milk, or dried market milk, or any combination thereof, which contains harmless sweetening, chocolate, chocolate syrup, or other harmless syrup or flavoring, or any combination of these syrups or flavorings, and harmless edible stabilizers which do not exceed one-half of 1 percent of the syrup or flavoring. UHT flavored lowfat milk shall be homogenized and processed and packaged pursuant to Section 39701.

39762. UHT flavored lowfat milk shall contain not less than 1 percent milk fat nor more than 2.1 percent milk fat and not less than 8.25 percent milk solids-not-fat.

Article 8. UHT Flavored Drink

39771. UHT flavored drink is milk or skim milk, evaporated, condensed, or dried milk, or nonfat milk solids, or any combination thereof, which contains harmless sweetening, chocolate, chocolate syrup, or other harmless syrup or flavoring, or any combination of these syrups or flavorings, and harmless edible stabilizer which does not exceed one-half of 1 percent by weight. It may be homogenized and shall be processed and packaged pursuant to Section 39701.

Article 9. UHT Half-and-Half

39781. UHT half-and-half is a product consisting of market milk, market cream, nonfat dry milk derived from market milk, and market skim milk to which edible stabilizers and stabilizing salts may be added. It shall be processed and packaged pursuant to Section 39701.

39782. UHT half-and-half shall contain not less than 10.5 percent milk fat and not more than six-tenths of 1 percent stabilizer by weight.

Article 10. UHT Sour Flavored Half-and-Half

39791. UHT sour flavored half-and-half is a product consisting of market milk, market cream, and market skim milk to which edible stabilizers, stabilizing salts, and acidified flavoring may be added. It shall be processed and packaged pursuant to Section 39701.

39792. UHT sour flavored half-and-half shall contain not less than 9.4 percent milk fat and not more than six-tenths of 1 percent stabilizer by weight.

Article 11. UHT Sour Cream

39801. UHT sour cream is market cream cultured with the addition of pure cultures of one or more strains of lactic acid bacteria. It may include one or more of the following optional ingredients: milk solids-not-fat derived from market milk, salt, or lactose. Harmless edible stabilizers and emulsifiers may be added to the extent required to accomplish the necessary physical effect. It shall be processed and packaged pursuant to Section 39701.

39802. UHT sour cream shall contain not less than 18 percent milk fat and not less than one-half of 1 percent acidity, expressed as lactic acid.

Article 12. UHT Milk Drink Mix

39811. UHT milk drink mix is a market milk product which has been processed and packaged pursuant to Section 39701.

39812. UHT milk drink mix shall contain not less than 12 percent total milk solids, not less than 4 percent butterfat, and not more than one-half of 1 percent pure and harmless edible stabilizer by weight. It may contain sweetening and harmless coloring and flavoring.

Article 13. UHT Dairy Spread

39821. UHT dairy spread is a product made from milk, cream, skim milk, or nonfat milk solids, or any combination thereof, to which may be added lactose, sodium caseinate, emulsifiers, stabilizers, stabilizing salts, and harmless coloring. The product shall be

processed and packaged pursuant to Section 39701.

39822. UHT dairy spread shall contain not less than 30 percent milk fat and not more than six-tenths of 1 percent stabilizer and emulsifier combined by weight, unless otherwise stated on the label.

Article 14. UHT Eggnog

39831. UHT eggnog is an unfrozen product which is made with milk, cream, evaporated or condensed milk, evaporated or condensed skim milk, dry milk solids, nonfat dry milk solids, buttermilk, whey, lactose, lactalbumins, lactoglobulins, and modified whey, or any combination thereof, egg yolk or whole eggs, sweetening, and harmless flavoring with or without harmless coloring. Harmless edible stabilizers may be added. UHT eggnog may contain ingredients authorized by the director, by regulation, under Section 38791.5. It shall be processed and packaged pursuant to Section 39701.

39832. UHT eggnog shall contain not less than 6 percent milk fat and not less than 8.25 percent milk solids-not-fat. It shall contain not less than one-half of 1 percent by weight of wholesome fresh egg yolk solids or the equivalent amount of egg yolk solids obtained from wholesome frozen egg yolks or from wholesome dried egg yolks or the equivalent amount in other approved form.

39833. Except as otherwise provided in this article, UHT eggnog shall meet all the standards and requirements which are specified in this division for eggnog.

SEC. 18. Section 61932 of the Food and Agricultural Code is amended to read:

61932. Class 1 comprises:

(a) Any market milk, market skim milk, half-and-half, or concentrated milk that is supplied to consumers in the fluid state, with the exception of the following:

(1) (A) Any UHT market milk product, as defined in Chapter 9 (commencing with Section 39701) of Part 3 of Division 15, which is sold for use outside the state.

(B) Any market milk products which are ultrapasteurized and sold for use outside the 48 contiguous states in the United States.

(2) Any market half-and-half which is ultrapasteurized and packaged in hermetically sealed containers.

(3) Any market half-and-half which is packaged in presterilized containers under aseptic conditions to meet the marketing requirements for these products in states other than this state. However, this paragraph does not authorize the sale within this state of any milk product as a UHT product unless the product meets the standards and requirements for UHT products specified in Chapter 9 (commencing with Section 39701) of Part 3 of Division 15.

(4) Any market milk, market skim milk, or market cream which is used in the manufacture of yogurts which are directly sold for use in states other than this state.

(b) Any market milk, market skim milk, or market cream which is used in any other milk product, or products resembling milk products, in which the use of market milk, or any components or derivatives of market milk, is required by, or pursuant to, this code, except any product defined in Section 61933 as class 2.

(c) Any market milk, market skim milk, market cream, market milk fat, or market milk solids-not-fat which is used in the standardizing or fortifying of any milk product which is defined in this section as class 1.

(d) Any market milk, market skim milk, or market cream which is used in any product not otherwise classified, which is required by any regulations adopted by the director pursuant to Article 2 (commencing with Section 36631) of Chapter 1 of Part 3 of Division 15 to be made from market milk or any components or derivatives of market milk.

(e) Any market milk, market skim milk, market cream, market milk fat, or market milk solids-not-fat used in any filled product or imitation milk product, when the product imitated or resembled, is defined in this section as class 1.

SEC. 19. Section 61935 of the Food and Agricultural Code is amended to read:

61935. (a) Class 4a comprises all market milk, market skim milk, or market cream used in the manufacture of butter, dried milk, dried skim milk, nonfat dry milk solids, defatted milk solids, dried buttermilk, and all market milk, market skim milk, or market cream which is supplied to consumers as condensed milk, condensed skim milk, evaporated skim milk, evaporated cream or clotted cream, or evaporated milk, and any milk products which are UHT products, as defined in Chapter 9 (commencing with Section 39701) of Part 3 of Division 15, or ultrapasteurized, and sold for use outside of the 48 contiguous states in the United States or any product for which no definition and standards are prescribed in Division 15 (commencing with Section 32501), except the products defined in paragraph (2) of subdivision (a) of Section 61932.

(b) Class 4b comprises all market milk, market skim milk, or market cream used in the manufacture of cheese other than cottage cheese.

SEC. 20. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. 21. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for a more equitable application of standards relating to the manufacture of frozen desserts, it is necessary that this act take effect immediately.

CHAPTER 647

An act to amend Section 7552 of the Government Code, relating to gold medallions.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987]

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

SECTION 1. Section 7552 of the Government Code is amended to read:

7552. Each medallion shall bear:

(a) On one side, the Great Seal of the State of California.

(b) On the reverse side; (1) across the top, the term "California Gold;" (2) in the center, any emblem of the State of California; (3) on the lower middle right side, the date; (4) on the lower middle left side, the mint mark of the certified registered mint with which the Department of General Services has contracted; (5) on the bottom left side, the size of the medallion; (6) along the bottom right side, the term ".999 fine;" and (7) along the entire outer edge, thirty-one (31) small stars.

The medallion shall have reeded or serrated edges with not less than 10 per quarter inch.

The medallions shall not be in similitude in design or size, to include diameter and thickness, to any United States or foreign coin.

The mint with which the Department of General Services has contracted shall not begin production of a new design without the approval of the Department of General Services. Any request for approval of a new design which has not been approved or rejected by the department within 14 calendar days after its receipt of the request shall be deemed approved.

CHAPTER 648

An act to add and repeal Section 87 of the Military and Veterans Code, relating to veterans.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987]

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

SECTION 1. Section 87 is added to the Military and Veterans Code, to read:

87. (a) The department, in cooperation with the Board of Medical Quality Assurance, shall develop a questionnaire for the identification of physicians and surgeons whose experience or medical specialties include the treatment of disorders experienced by veterans as a result of combat.

(b) The Board of Medical Quality Assurance shall, once each year in 1988, 1989, and 1990, transmit the questionnaire to every licensed physician and surgeon in the state explaining the purposes of the physician referral service and requesting the physician and surgeon to indicate his or her experience or skills, if any, in combat-related disorders. Response to the questionnaire shall be voluntary. Physicians and surgeons responding to the questionnaire shall be requested to transmit their responses to the county veteran service officer serving the geographic area within which the physician and surgeon practices.

(c) A county veteran service officer may provide the name, address, and telephone number of a physician and surgeon who has responded to the questionnaire to any veteran requesting that information.

(d) The department shall, on or before July 1, 1990, compile and submit to the Legislature any information obtained voluntarily from county veteran service officers relating to their experiences with the physician referral service pursuant to this section together with their recommendations concerning continuation of the service.

(e) Neither the state nor any county is required to verify or endorse any response furnished by a physician and surgeon pursuant to this section or shall be liable for any injury arising from a referral made pursuant to this section, or from any failure to make a referral.

(f) This section shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1991, deletes or extends that date.

CHAPTER 649

An act to add and repeal Section 7149.7 of the Fish and Game Code, relating to fish.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987]

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

SECTION 1. Section 7149.7 is added to the Fish and Game Code, to read:

7149.7. Notwithstanding Section 7145, the director may designate not more than two days, which may or may not be consecutive, in each year as free sportfishing days during which residents and nonresidents may, without having a sportfishing license and without

the payment of any fee, exercise the privileges of a holder of a sportfishing license, subject to all of the limitations, restrictions, conditions, laws, rules and regulations applicable to the holder of a sportfishing license.

This section shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1991, deletes or extends that date.

CHAPTER 650

An act to amend Sections 12881.4 and 12884.2 of the Water Code, relating to water projects.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987]

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

SECTION 1. Section 12881.4 of the Water Code is amended to read:

12881.4. In the administration of this chapter, the department and the commission shall give preference to projects involving the development of new basic water supplies. The department and the commission may also give preference to projects involving the repair, alteration, or replacement of dam and reservoir facilities which are subject to storage restrictions for dam safety purposes pursuant to Part 1 (commencing with Section 6000) of Division 3.

SEC. 2. Section 12884.2 of the Water Code is amended to read:

12884.2. Grants in furtherance of a project that involves the development of a new water supply or a project that involves the repair, alteration, or replacement of dam and reservoir facilities which are subject to storage restrictions for dam safety purposes pursuant to Part 1 (commencing with Section 6000) of Division 3 may be made for the following purposes:

(a) For the part of the construction cost of the proposed project properly allocated to the enhancement of fish and wildlife, except, that a grant for that part shall not exceed 50 percent of the construction cost. In allocating the costs of repair, alteration, or replacement of a dam to fish and wildlife enhancement, the department may consider existing fish and wildlife resources to the extent that they would be reduced or eliminated by a storage restriction for dam safety purposes pursuant to Part 1 (commencing with Section 6000) of Division 3.

(b) For the part of the construction cost of any dam and reservoir of the proposed project properly allocated to recreational functions of statewide interest, except that a grant for that part shall not exceed 50 percent of the construction cost, and provided further, that the total grant under subdivisions (a) and (b) for any one project shall

not exceed 75 percent of the construction cost of the project. In allocating the costs of repair, alteration, or replacement of a dam, to recreational functions of statewide interest, the department may consider existing recreation, to the extent that it would be reduced or eliminated by a storage restriction for dam safety purposes pursuant to Part 1 (commencing with Section 6000) of Division 3. Those construction costs may include expenditures for lands located above the high waterline of reservoirs which are necessary or desirable for public recreation in connection with the reservoir.

(c) For the construction of initial water supply and sanitary facilities which are needed for public recreational use of each proposed dam and reservoir of the proposed project which will develop a new water supply. A grant for the purpose specified in this subdivision shall not be subject to the limitation contained in Section 12884 on grants for the purposes specified in subdivisions (a) and (b) and shall not be included in computing the total amount which may be granted to a public agency in connection with a project for those purposes. A grant for the purpose specified in this subdivision shall not exceed one-fourth of the total amount granted to a public agency in connection with a project for the purposes specified in subdivision (a) or (b), or both.

SEC. 3. (a) The Legislature hereby finds and declares that providing state assistance to aid the Big Bear Municipal Water District in maintaining the Bear Valley Dam, and to aid the Littlerock Creek Irrigation District and the Palmdale Water District in repairing, altering, or replacing Littlerock Dam, in compliance with state earthquake standards will provide broad regional and state benefits.

(b) The Legislature further finds and declares that, subject to the approval of the California Water Commission, as required by the Davis-Grunsky Act (Chapter 5 (commencing with Section 12880) of Part 6 of Division 6 of the Water Code), providing loans and grants to other dam and reservoir projects to bring them into compliance with seismic safety standards will provide broad regional and statewide benefits by assuring that existing water supply, fish and wildlife enhancement, and recreational purposes are not impaired or eliminated by storage restrictions.

SEC. 4. The Department of Water Resources is hereby authorized to make a grant to the Big Bear Municipal Water District pursuant to the Davis-Grunsky Act (Chapter 5 (commencing with Section 12880) of Part 6 of Division 6 of the Water Code) for the costs of repairing or altering Bear Valley Dam that the department finds to be properly allocated to fish and wildlife enhancement or to recreational functions of statewide interest, upon approval of an application therefor pursuant to that act. The department may also make a loan for the reconstruction of Bear Valley Dam for water supply purposes pursuant to the Davis-Grunsky Act, but the total combined amount of the loan and grant shall not exceed the amount of five million dollars ($5,000,000). In addition, the total amount of

Davis-Grunsky Act funds disbursed shall not exceed 50 percent of the total project costs.

SEC. 5. (a) The Department of Water Resources is hereby authorized to make a grant to the Littlerock Creek Irrigation District and the Palmdale Water District pursuant to the Davis-Grunsky Act (Chapter 5 (commencing with Section 12880) of Part 6 of Division 6 of the Water Code) for the costs of repairing or altering Littlerock Dam that the department finds to be properly allocated to fish and wildlife enhancement or to recreational functions of statewide interest, upon approval of an application therefore pursuant to that act. The department may also make a loan for the reconstruction of Littlerock Dam for water supply purposes pursuant to the Davis-Grunsky Act, but the total combined amount of the loan and grant may not exceed three million dollars ($3,000,000).

(b) In the event that the Littlerock Creek Irrigation District and the Palmdale Water District determine to remove, or partially remove, Littlerock Dam from service in lieu of repairing or altering the dam, the department is hereby authorized to make a loan to those districts pursuant to the Davis-Grunsky Act for the cost of constructing replacement works to enable the districts to utilize Littlerock Creek for water supply purposes in an amount determined by the department upon approval of an application therefor, but not to exceed three million dollars ($3,000,000). A portion of that amount may be granted to the districts for the portion of the cost of replacement works properly allocated to fish and wildlife enhancement or recreation, as specified in subdivision (a).

CHAPTER 651

An act to amend Section 38255 of the Vehicle Code, relating to off-highway vehicles.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987]

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

SECTION 1. 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 $9
(b) For a transfer by the legal owner $9
(c) When application is presented showing a transfer by both the owner and legal owner $9

CHAPTER 652

An act to add Chapter 3.5 (commencing with Section 1917) to Title 4 of Part 4 of Division 3 of the Civil Code, relating to loans.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Chapter 3.5 (commencing with Section 1917) is added to Title 4 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 3.5. SHARED APPRECIATION LOANS

1917. For purposes of this chapter:

(a) "Contingent deferred interest" means the sum a borrower is obligated to pay to a lender pursuant to the documentation of a shared appreciation loan as a share of (1) the appreciation in the value of the security property (2) rents and profits attributable to the subject property, or (3) both.

(b) A "shared appreciation loan" means any loan made upon the security of an interest in real property which additionally obligates the borrower to pay to the lender contingent deferred interest pursuant to the loan documentation. "Shared appreciation loan" does not include any loan made upon the security of an interest in real property containing one to four residential units at least one of which at the time the loan is made is or is to be occupied by the borrower.

1917.001. The relationship of the borrower and the lender in a shared appreciation loan transaction is that of debtor and creditor and shall not be, or be construed to be, a joint venture, equity venture, partnership, or other relationship.

1917.002. A shared appreciation loan shall not be subject to any provisions of this code or the Financial Code which limits the interest rate or change of interest rate of variable, adjustable, or renegotiable interest instruments, or which requires particular language or provisions in security instruments securing variable, adjustable, or renegotiable rate obligations or in evidences of such debts except for those specifically imposed by Chapter 4 (commencing with Section 1917.010) or Chapter 7 (commencing with Section 1917.320) for loans

subject to those chapters. This section is declaratory of existing law.

1917.003. The lien of a deed of trust securing a shared appreciation loan shall include and secure the principle amount of the shared appreciation loan, and all interest, whether accrued or to be accrued, including all amounts of contingent deferred interest.

1917.004. (a) The lien of a shared appreciation loan, including the principle amount and all interest, whether accrued or to be accrued, and all amounts of contingent deferred interest, shall attach from the time of the recordation of the deed of trust securing the loan, and the lien, including the lien of the interest accrued, or to be accrued, and of the contingent deferred interest, shall have priority over any other lien or encumbrance affecting the property encumbered by the shared appreciation deed of trust which is recorded after the time of recordation of the shared appreciation deed of trust. Nothing in this section shall preclude a junior or subordinate lien to the deed of trust securing the shared appreciation loan.

(b) Any deed of trust that acts as security for a shared appreciation loan shall indicate on the document that the deed of trust secures a shared appreciation loan.

1917.005. Lenders shall be exempt from the usury provisions of Article XV of the California Constitution with respect to shared appreciation loan transactions. This section is declaratory of existing law.

CHAPTER 653

An act to amend Section 1428 of the Health and Safety Code, relating to long-term health care facilities.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Section 1428 of the Health and Safety Code is amended to read:

1428. (a) If a licensee desires to contest a class "AA" or a class "A" citation, or a citation alleging a class "B" violation and either a class "AA" or class "A" violation or the proposed assessment of a civil penalty therefor, the licensee shall within five business days after service of the citation notify the director in writing of his or her request for a citation review conference with the designee of the director for the county in which the cited long-term health care facility is located. The director's designee shall hold, within five business days from the receipt of the request, a citation review conference, at the conclusion of which he or she may affirm, modify, or dismiss the citation or proposed assessment of a civil penalty. If the

director's designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action, and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within five business days after he or she receives the decision by the director's designee. If the licensee fails to notify the director in writing that he or she intends to contest the citation or the proposed assessment of a civil penalty therefor or the decision made by a director's designee after a citation review conference within the time specified in this subdivision, the citation or the proposed assessment of a civil penalty or the decision by a director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review.

(b) If a licensee notifies the director that he or she intends to contest a class "AA" or a class "A" citation, or a citation alleging a class "B" violation and either a class "AA" or class "A" violation, the director shall immediately notify the Attorney General. Upon notification, the Attorney General shall promptly take all appropriate action to enforce the citation and recover the civil penalty prescribed thereon, and shall take such other action as the Attorney General shall deem appropriate, in the court of competent jurisdiction for the county in which the long-term health care facility is located.

(c) If a licensee desires to contest a class "B" citation or the proposed assessment of a civil penalty therefor, the licensee shall within five business days after service of the citation (1) notify the director in writing of his or her request for a citation review conference with the designee of the director for the county in which the cited long-term health care facility is located; or (2) notify the director in writing of the licensee's intent to adjudicate the validity of the citation in the municipal court in the county in which the long-term health care facility is located. If requested by the licensee, the director's designee shall hold, within five business days from the receipt of the request, a citation review conference, at the conclusion of which he or she may affirm, modify, or dismiss the citation or the proposed assessment of a civil penalty. If the director's designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within five business days after he or she receives the decision by the director's designee. In order to perfect a judicial appeal of a contested citation, a licensee shall file a civil action in the municipal court in the county in which the long-term health care facility is located. The action shall be filed

no later than 60 calendar days after a licensee notifies the director that he or she intends to contest a citation, or, in the event a citation review conference is held, no later than 60 calendar days after a licensee notifies the director of his or her intent to contest the decision of the director's designee. If a judicial appeal is prosecuted under the provisions of this subdivision, the state department shall have the burden of establishing by a preponderance of the evidence that (1) the alleged violation did occur, (2) the alleged violation met the criteria for the class of citation alleged, and (3) the assessed penalty was appropriate. The state department shall also have the burden of establishing by a preponderance of the evidence that the assessment of a civil penalty should be upheld. If a licensee fails to notify the director in writing that he or she intends to contest the citation or the decision made by the director's designee within the time specified in this subdivision, or fails to file a civil action within the time specified in this subdivision, the citation or the decision by the director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review. If a licensee prosecutes a judicial appeal of a contested citation or the assessment of a civil penalty, no civil penalty shall be due and payable unless and until the appeal is terminated in favor of the state department.

(d) The director or the director's designee shall establish an independent unit of trained citation review conference hearing officers within the state department to conduct citation review conferences. Citation review conference hearing officers shall be directly responsible to the deputy director for licensing and certification, and shall not be concurrently employed as supervisors, district administrators, or regional administrators with the licensing and certification division. Specific training shall be provided to members of this unit on conducting an informal conference, with emphasis on the regulatory and legal aspects of long-term health care.

Where the state department issues a citation as a result of a complaint or regular inspection visit, and a resident or residents are specifically identified in a citation by name as being specifically affected by the violation, then the following persons may attend the citation review conference.

(1) The complainant and his or her designated representative.

(2) A personal health care provider, designated by the resident.

(3) A personal attorney, only if the long-term health care facility has an attorney present.

(4) Any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code.

Where the state department determines that residents in the facility were threatened by the cited violation but does not name specific residents, any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of

Section 9701 of the Welfare and Institutions Code, and a representative of the residents or family council at the facility may participate to represent all residents. In this case, these representatives shall be the sole participants for the residents in the conference. The residents' council shall designate which representative will participate.

The complainant, affected resident, or their designated representatives shall be notified by the state department of the conference and their right to participate. The director's designee shall notify the complainant or his or her designated representative and the affected resident or his or her designated representative, of his or her determination based on the citation review conference.

(e) In assessing the civil penalty for a violation, all relevant facts shall be considered, including, but not limited to, all of the following:

(1) The probability and severity of the risk which the violation presents to the patient's mental and physical condition.

(2) The patient's medical condition.

(3) The patient's mental condition and his or her history of mental disability.

(4) The good-faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(f) Except as otherwise provided in this subdivision, an assessment of civil penalties for a class "A" or class "B" violation shall be trebled and collected for a second or subsequent violation occurring within any 12-month period, if a citation was issued and a civil penalty assessed for the previous violation occurring within the period, without regard to whether the action to enforce the previous citation has become final. However, the increment to the civil penalty required by this subdivision shall not be due and payable unless and until the previous action has terminated in favor of the state department.

If the class "B" violation is a patient's rights violation, as defined in subdivision (d) of Section 1424, it shall not be trebled unless the state department determines the violation has a direct or immediate relationship to the health, safety, security, or welfare of long-term health care facility residents.

(g) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to safety or health.

(h) Actions brought under this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing any such proceeding shall be set by the judge of the court with the object of securing a decision as to subject matters at the earliest possible time.

(i) If the citation is dismissed or reduced, the state department shall take action immediately to ensure that the public records

reflect in a prominent manner that the citation was dismissed or reduced.

(j) Upon a licensee notifying the director of its intent to contest one or more citations or decisions made following a citation review conference where the total penalties do not exceed fifteen thousand dollars ($15,000), either the state or the licensee may elect to submit the matter to binding arbitration. The parties shall agree upon an arbitrator designated from the American Arbitration Association in accordance with the association's established rules and procedures. The arbitration hearing shall be set within 45 days of the petitioner's election, but in no event less than 28 days from the date of selection of an arbitrator. The arbitration hearing may be continued up to 15 additional days if necessary at the arbitrator's discretion. The arbitrator's decision shall specify, in writing, the areas of disagreement between the parties, the evidence upon which the decision is based, and the reasons for the decision. The decision of the arbitrator shall be based upon substantive law and shall be binding on all parties, subject to judicial review. This review shall be limited to whether there was substantial evidence to support the decision of the arbitrator.

The arbitrator shall determine which of the parties are financially liable for arbitration costs based upon the position each took at the commencement of the arbitration proceedings compared to the decision of the arbitrator.

The retention of, renewal of, or application for, a license to operate a skilled nursing facility or intermediate care facility shall, for purposes of the administration of this chapter, be deemed a written agreement to arbitrate contested citations within the meaning of Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure. Without extending the time for commencement of these hearings, Section 1283.05 of the Code of Civil Procedure shall be applicable to all proceedings to arbitrate citations issued pursuant to this chapter, except that depositions may be noticed and taken without prior approval of the arbitrator.

Penalties paid on violations under this chapter shall be applied against the state department's accounts to offset any costs incurred by the state pursuant to this subdivision. Any costs or penalties assessed pursuant to this chapter shall be paid within 30 days of the date the decision becomes final. If a facility does not comply with this provision, the state department shall withhold any payment under the Medi-Cal program until the debt is satisfied. No payment shall be withheld if the state department determines that it would cause undue hardship to the facility or to patients of the facility.

CHAPTER 654

An act to amend Sections 76005 and 76006 of the Government Code, and to amend Section 42008 of the Vehicle Code, relating to courthouse construction funds.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987]

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

SECTION 1. Section 76005 of the Government Code is amended to read:

76005. (a) Notwithstanding any other provision of law, to assist a county other than Contra Costa, Los Angeles, Santa Clara, San Diego, or the City and County of San Francisco in the acquisition, rehabilitation, construction, and financing of courtrooms or of a courtroom building or buildings containing facilities necessary to the operation of the courts, and, in Monterey County, the improvement of criminal justice automated information systems, and, in San Bernardino County, the maintenance, operation, construction, reconstruction, or expansion of county juvenile justice rehabilitation facilities, the board of supervisors of a county other than Contra Costa, Los Angeles, Santa Clara, San Diego, or the City and County of San Francisco, operative upon the adoption of a resolution stating that the provisions of this section and the assessments provided for in paragraph (2) of subdivision (a) of Section 76000 are necessary to the establishment of adequate courtroom facilities in the county, may establish in the county treasury a Courthouse Temporary Construction Fund.

The county treasurer shall place all assessment amounts collected on nonparking offenses pursuant to paragraph (2) of subdivision (a) of Section 76000 in the fund.

(b) The fund moneys together with any interest earned thereon shall be held by the treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code. The moneys of the Courthouse Temporary Construction Fund together with any interest earned thereon shall be payable only for courtroom construction as authorized in subdivision (a); provided, that in Monterey County, for a five-year period, up to 50 percent of the moneys deposited each year in the Courthouse Temporary Construction Fund, but in no case exceeding a total of five hundred thousand dollars ($500,000) for the five-year period, may be payable for the improvement of criminal justice automated information systems upon the adoption of a resolution by the board of supervisors stating that such moneys used for automated information system improvement purposes are not required for the construction of courthouse buildings during the five-year period; and provided, that in San Bernardino County moneys deposited each year in the

Courthouse Temporary Construction Fund may also be used for the maintenance, operation, construction, reconstruction, or expansion of county juvenile justice rehabilitation facilities.

(c) Deposits to the fund in accordance with subdivision (a) shall continue through and including either (1) the 20th year after the initial calendar year in which the surcharge is collected or (2) whatever period of time is necessary to repay any borrowings made by the county to finance construction provided for in this section, whichever time shall be longer.

SEC. 2. Section 76006 of the Government Code is amended to read:

76006. (a) Notwithstanding any other provision of law, to assist the Counties of Contra Costa, Santa Clara, and San Diego in the acquisition, rehabilitation, construction, and financing of courtrooms or of a courtroom building or buildings containing facilities necessary to the operation of the courts, the board of supervisors of the County of Contra Costa, Santa Clara, or San Diego, respectively, operative upon the adoption of a resolution stating that the provisions of this section and the assessments provided for in Section 76000 are necessary to the establishment of adequate courtroom facilities in the county, may establish in the county treasury a Courthouse Temporary Construction Fund.

The county treasurer shall place all assessment amounts collected pursuant to Section 76000 in the fund.

(b) In addition to observing the increased bail amounts as established by the court pursuant to paragraph (1) of subdivision (a) of Section 76000, each city, district, or other issuing agency which elects to receive, deposit, accept forfeitures, and otherwise process the posting of bail for parking violations pursuant to subdivision (3) of Section 1463 of the Penal Code, shall pay one dollar and fifty cents ($1.50) for each bail deposit collected on each bail violation which is not filed in court to the county treasurer. These payments to the county treasurer shall be made monthly, and the treasurer shall deposit all those payments in the fund.

(c) The fund moneys together with any interest earned thereon shall be held by the treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code. The moneys of the Courthouse Temporary Construction Fund together with any interest earned thereon shall be payable only for courtroom construction as authorized in subdivision (a).

(d) Deposits to the fund in accordance with subdivisions (a) and (b) shall continue through and including either (1) the 20th year after the initial calendar year in which the surcharge is collected or (2) whatever period of time is necessary to repay any borrowings or public agency funding mechanism, including, but not limited to, retirement of bonded indebtedness, loan repayments, and monthly payments involving lease-purchase programs made by the county to finance construction provided for in this section, whichever time shall be longer.

SEC. 3. Section 42008 of the Vehicle Code is amended to read:

42008. In addition to the fees authorized or required by other provisions of law, and upon order of the court in a county in which a fund is established pursuant to Section 76001, 76002, 76004, or 76006 of the Government Code, the clerk of the court shall collect one dollar ($1) for each fund so established for the county from every person ordered, in lieu of a fine, to attend a school pursuant to Section 42005 of this code or any court-supervised program of driving instruction.

The amounts collected shall be deposited with the county treasurer and placed in the fund established pursuant to Section 76001, 76002, 76004, or 76006 of the Government Code.

SEC. 4. Section 3 of this act shall not become operative if Senate Bill 213 is enacted, repeals Section 42008 of the Vehicle Code, and becomes operative on or before January 1, 1988.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 655

An act to amend Section 39298 of, and to add Section 39360.3 to, the Education Code, relating to child care.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Due to economic and social changes in California, child care has become a necessity for working families, including families headed by a single woman or man and dual wage-earning families. This growing need has fostered an availability crisis for quality child care.

(b) Studies have shown that the shortage of child care spaces ranges as high as 40 percent in Sacramento County and San Francisco, and that some two million children may be without adequate day care throughout the state. This problem is particularly acute for "latchkey" children—those left on their own before and after school while their parents are at work.

(c) The child care shortage stems, at least in part, from the failure of the private sector to meet the demand for child care facilities. One contributing factor, particularly in dense urban areas, is the high cost of land and constructing facilities.

(d) The state can stimulate private sector child care providers to

increase spaces by encouraging the use of surplus or unused facilities for child care use. Particularly appropriate for that use are underutilized school facilities, because they are designed for use by children and are conveniently located for before-school and after-school child care programs.

SEC. 2. Section 39298 of the Education Code is amended to read:

39298. The school district advisory committee shall do all of the following:

(a) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property.

(b) Establish a priority list of use of surplus space and real property that will be acceptable to the community.

(c) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 39360.3.

(d) Make a final determination of limits of tolerance of use of space and real property.

(e) Forward to the district governing board a report recommending uses of surplus space and real property.

SEC. 3. Section 39360.3 is added to the Education Code, to read:

39360.3. (a) Notwithstanding Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code, the governing board of any school district complying with Section 101338.2 of Title 22 of the California Administrative Code and seeking to sell or lease any real property it deems to be surplus property may first offer that property for sale or lease to any contracting agency, as defined in Section 8208 of the Education Code, pursuant to the following conditions:

(1) The real property sold or leased shall be used by the contracting agency, or by any successor in interest to the contracting agency, exclusively for the delivery of child care and development services, as defined in Section 8208 of the Education Code, for a period of not less than five years from the date upon which the real property is made available to that agency, or successor in interest, pursuant to the sale, or, in the event of a lease, until the real property is returned to the possession of the school district, whichever occurs earlier.

(2) In the event that the contracting agency, or any successor in interest, fails to comply with the condition set forth in paragraph (1), that agency, or successor in interest, that purchased the real property, is required immediately to offer that real property for sale pursuant to this article and Article 5 (commencing with Section 39390) and to sell the property pursuant to those provisions. The agency, or its successor in interest, shall comply, in that regard, with all requirements under those provisions that would otherwise apply

to a school district, except that a sale price computed under subdivision (a) of Section 39396 shall be based upon the cost of acquisition incurred by the school district that sold the property pursuant to this subdivision, rather than that incurred by the contracting agency or its successor in interest. In the event, alternatively, of a lease of real property pursuant to this subdivision, the failure by the contracting agency, or any successor in interest, to comply with paragraph (1) shall constitute a breach of the lease, entitling the school district to immediate possession of the real property, in addition to any damages to which the district may be entitled under the lease agreement.

(3) The school district, and each of the entities authorized to receive offers of sale pursuant to this article or Article 5 (commencing with Section 39390), has standing to enforce the conditions set forth in this subdivision, and shall be entitled to the payment of reasonable attorneys' fees incurred as a prevailing party in any action or proceeding brought to enforce any of those conditions.

(b) No sale or lease of the real property of any school district, as authorized under subdivision (a), may occur until the school district advisory committee has held hearings pursuant to subdivision (c) of Section 39298.

(c) This section is in addition to, and shall not limit the requirements of, Article 5 (commencing with Section 39390), but this section may be utilized with regard to property which the governing board of a school district may retain under Section 39395.

CHAPTER 656

An act to amend Section 11372 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Section 11372 of the Health and Safety Code is amended to read:

11372. (a) In addition to the term of imprisonment provided by law for persons convicted of violating Section 11350, 11351, 11351.5, 11352, 11353, 11355, 11359, 11360, or 11361, the trial court may impose a fine not exceeding twenty thousand dollars ($20,000) for each such offense. In no event shall such fine be levied in lieu of or in substitution for the term of imprisonment provided by law for any of such offenses.

(b) Any person receiving an additional term pursuant to paragraph (1) of subdivision (a) of Section 11370.4, may, in addition,

be fined an amount not exceeding one million dollars ($1,000,000) for each such offense.

(c) Any person receiving an additional term pursuant to paragraph (2) of subdivision (a) of Section 11370.4, may, in addition, be fined an amount not to exceed four million dollars ($4,000,000) for each such offense.

(d) Any person receiving an additional term pursuant to paragraph (3) of subdivision (a) of Section 11370.4, may, in addition, be fined by amount not to exceed eight million dollars ($8,000,000) for each such offense.

(e) The court shall make a finding, prior to the imposition of the fines authorized by subdivision (b) to (e), inclusive, that there is a reasonable expectation that the fine, or a substantial portion thereof, could be collected within a reasonable period of time, taking into consideration the defendant's income, earning capacity, and financial resources.

CHAPTER 657

An act to amend Sections 4065.2 and 4416 of the Business and Professions Code, relating to pharmacy, and making an appropriation therefor.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Section 4065.2 of the Business and Professions Code is amended to read:

4065.2. (a) Each application for a permit under this article shall be made on a form furnished by the board. Each initial application shall contain a statement from a consulting pharmacist certifying that the policies and procedures of the clinic's drug distribution service, relative to inventories, security procedures, training, protocol development, recordkeeping, packaging, labeling, dispensing, and patient consultation are consistent with the promotion and protection of health and safety of the public. Upon the filing of the application and the payment of the fee prescribed in subdivision (s) of Section 4416, the board shall make a thorough investigation to determine whether the applicant and the premises for which application for a permit is made qualify for a permit. The board shall also determine whether this article has been complied with, and shall investigate all matters directly related to the issuance of the permit. The board shall not, however, investigate any matters connected with the operation of a premises, including operating hours, parking availability, or operating noise, except those matters relating to the furnishing, sale, or dispensing of drugs or devices. The

board shall deny an application for a permit if either the applicant or the premises for which application for a permit is made do not qualify for a permit under this article.

(b) If the board determines that the applicant and the premises for which application for a permit is made qualify for a permit under this article, the executive officer of the board shall issue a permit authorizing the clinic to which it is issued to purchase drugs at wholesale pursuant to Section 4065. The permit shall be renewed annually upon payment of the renewal fee prescribed in subdivision (s) of Section 4416 and shall not be transferable.

SEC. 2. Section 4416 of the Business and Professions Code is amended to read:

4416. The amount of fees and penalties prescribed by this chapter, except as otherwise provided, is that fixed by the board according to the following schedule:

(a) The fee for a nongovernmental pharmacy license shall be three hundred forty dollars ($340) and may be increased to four hundred dollars ($400).

The fee for a nongovernmental pharmacy annual renewal shall be one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250).

(b) The fee for processing remodeling plans and inspecting a remodeled pharmacy shall be one hundred thirty dollars ($130) and may be increased to one hundred seventy-five dollars ($175).

(c) The fee for the pharmacist examination shall be one hundred fifty-five dollars ($155) and may be increased to one hundred eighty-five dollars ($185).

(d) The fee for regrading an examination shall be seventy-five dollars ($75) and may be increased to eighty-five dollars ($85). If an error in grading is found and the applicant passes the examination, the regrading fee shall be refunded.

(e) The fee for a pharmacist license and biennial renewal shall be one hundred fifteen dollars ($115) and may be increased to one hundred fifty dollars ($150).

(f) The fee for a wholesaler permit and annual renewal shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(g) The fee for a hypodermic license and renewal shall be ninety dollars ($90) and may be increased to one hundred twenty-five dollars ($125).

(h) The fee for examination and investigation for an exemption certificate under Sections 4050.5 and 4050.7 shall be seventy-five dollars ($75) and may be increased to one hundred dollars ($100).

(i) The fee for an exemption certificate and annual renewal under Sections 4050.5 and 4050.7 shall be one hundred ten dollars ($110) and may be increased to one hundred fifty dollars ($150).

(j) The fee for an out-of-state drug distributor's license and annual renewal issued pursuant to Section 4084.6 shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(k) The fee for registration and annual renewal of providers of continuing education shall be one hundred dollars ($100) and may be increased to one hundred thirty dollars ($130).

(*l*) The fee for evaluation of continuing education courses for accreditation shall be set by the board at an amount not to exceed forty dollars ($40) per course hour.

(m) The fee for evaluation of applications submitted by graduates of foreign colleges of pharmacy or colleges of pharmacy not recognized by the board shall be one hundred sixty-five dollars ($165) and may be increased to one hundred seventy-five dollars ($175).

(n) The fee for an intern license or extension shall be sixty-five dollars ($65) and may be increased to seventy-five dollars ($75). The fee for transfer of intern hours or verification of licensure to another state shall be fixed by the board not to exceed twenty dollars ($20).

(o) The board may, by regulation, provide for the waiver or refund of the additional fee for the issuance of a certificate where the certificate is issued less than 45 days before the next succeeding regular renewal date.

(p) The board shall collect all accrued and unpaid renewal fees and the applicable penalty fees for a pharmacist license that has been delinquent for more than one year.

(q) The fee for the reissuance of any permit, license, or certificate, or renewal thereof, which has been lost or destroyed or reissued due to a name change is thirty dollars ($30).

The fee for the reissuance of any permit, license, or certificate, or renewal thereof, which must be reissued because of a change in the information, is sixty dollars ($60) and may be increased to one hundred dollars ($100).

(r) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Pharmacy Board Contingent Fund equal to approximately one year's operating expenditures.

(s) The fee for any applicant for a clinic permit is three hundred forty dollars ($340) and may be increased to four hundred dollars ($400) for each permit. The annual fee for renewal of the permit is one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250) for each permit.

CHAPTER 658

An act to amend Sections 50176, 50185, and 50195 of, and to add and repeal Chapter 3.6 (commencing with Section 50199.7) 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 14, 1987 Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Section 50176 of the Health and Safety Code is amended to read:

50176. As used in this chapter, the following terms have the following meanings:

(a) "Allocation" means the maximum aggregate principal amount of qualified mortgage bonds that a state or local agency is allocated to issue in any calendar year as provided in Sections 50189, 50190, and 50191.

(b) "Certificate credit rate" means the rate of the credit allowed by this chapter which is specified in the mortgage credit certificate.

(c) "Certified indebtedness amount" means the amount of indebtedness which meets both of the following criteria:

(1) Is incurred by the taxpayer for any of the following purposes:

(A) To acquire the principal residence of the taxpayer.

(B) As a qualified home improvement loan, as defined by Section 103A(*l*)(6) of Title 26 of the United States Code, on that residence.

(C) As a qualified rehabilitation loan, as defined by Section 103A(*l*)(7) of Title 26 of the United States Code.

(2) Is specified in the mortgage credit certificate.

(d) "Committee" means the Mortgage Bond and Tax Credit Allocation Committee established pursuant to Section 50185.

(e) "Entitlement allocation" means the allocation of qualified mortgage bonds to a state agency pursuant to Section 50190, and with respect to a local agency, the allocation of qualified mortgage bonds pursuant to subdivision (a) of Section 50189.

(f) "Federal act" means both of the following:

(1) For purposes of qualified mortgage bonds, Section 103A of the Internal Revenue Code of 1954 as enacted by the Mortgage Subsidy Bond Tax Act of 1980 or as hereafter amended, and includes administrative regulations adopted pursuant to that act.

(2) For purposes of mortgage credit certificates, Section 612 of the Tax Reform Act of 1984 (Public Law 98-369).

(g) Except as otherwise provided in Section 50197, "issuer" means a state agency or local agency and includes a redevelopment agency, housing authority or other local entity, authorized by state law to issue bonds, to which a local agency has assigned an allocation under

this chapter.

(h) "Local agency" means a city, county, or city and county.

(i) "Median household income" means "median household income", as defined by subdivision (f) of Section 52020.

(j) "Mortgage credit certificate" means any certificate which does all of the following:

(1) Is issued under a qualified mortgage credit certificate program by a state or local agency that has authority to issue qualified mortgage bonds to provide financing on the principal residence of a taxpayer.

(2) Is issued to a taxpayer by a state or local agency in connection with the acquisition, qualified rehabilitation, or qualified home improvement of the taxpayer's principal residence.

(3) Specifies the certificate credit rate and the certified indebtedness amount.

(k) "Mortgage credit certificate program" means any program which is established by the state or a local agency for any calendar year in which the state or a local agency is authorized to issue qualified mortgage bonds and under which the issuing agency elects not to issue an amount of qualified mortgage bonds which it may otherwise issue during the calendar year.

(*l*) "Qualified mortgage bonds" has the same meaning as that specified in the federal act, as defined by paragraph (1) of subdivision (f).

(m) "State agency" means the California Housing Finance Agency, the Veterans Affairs Department, the University of California Board of Regents, or any other state agency having the authority to issue qualified mortgage revenue bonds.

(n) "State ceiling" has the same meaning as that specified in the federal act, as defined by paragraph (1) of subdivision (f) and as established in accordance with that federal act by the Mortgage Bond and Tax Credit Allocation Committee as provided in Section 50187.

(o) "Supplementary allocation" means the allocation of qualified mortgage bonds to a local agency pursuant to subdivision (b) of Section 50189.

(p) "Territory" means for any city or city and county, the area within the boundaries of the city or city and county, and for any county, the area within the boundaries of the county not within the boundaries of any city.

SEC. 2. Section 50185 of the Health and Safety Code is amended to read:

50185. The Mortgage Bond Allocation Committee is hereby renamed the Mortgage Bond and Tax Credit Allocation Committee. The committee is composed of the Governor, or in the Governor's absence, the Director of Finance, the Controller, and the 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 Treasurer shall be the chairperson of the committee. The members of the committee shall serve without compensation. A majority of voting members shall be empowered to act for the committee. The committee may employ an executive secretary to carry out its duties under this chapter.

SEC. 2.5. Section 50195 of the Health and Safety Code is amended to read:

50195. (a) The committee shall establish and charge a fee which it determines is reasonably sufficient to cover all of the costs of the committee in carrying out its responsibilities under this chapter and Chapter 3.6 (commencing with Section 50199.7). The Mortgage Bond Allocation Fee Account in the General Fund is hereby renamed the Mortgage Bond and Tax Credit Allocation Fee Account. The fees shall be deposited by the committee in the Mortgage Bond and Tax Credit Allocation Fee Account and shall be available, upon appropriation by the Legislature, to the committee for the purpose of covering all of those costs, except that fees may be shared, in an amount determined by the committee, with any state or local agency through which an application has been submitted pursuant to Chapter 3.6 (commencing with Section 50199.7).

(b) Funds deposited in the Mortgage Bond and Tax Credit Allocation Fee Account are continuously appropriated without regard to fiscal year for purposes of sharing with state and local agencies pursuant to subdivision (a).

(c) Until the time that sufficient fee revenue is received by the committee, the committee may borrow any money as may be required for the purpose of meeting necessary expenses of the operation of the committee, not to exceed the amount appropriated. Any loan made to the committee pursuant to this subdivision shall be repayable solely from moneys appropriated to the committee from the Mortgage Bond and Tax Credit Allocation Fee Account and shall not constitute a general obligation for which the faith and credit of the state are pledged.

SEC. 3. Chapter 3.6 (commencing with Section 50199.7) is added to Part 1 of Division 31 of the Health and Safety Code, to read:

CHAPTER 3.6. LOW-INCOME HOUSING CREDIT

50199.7. The Legislature hereby finds and declares that the federal Tax Reform Act of 1986 (Public Law 99-514) establishes a low-income housing tax credit to stimulate the production and rehabilitation of shelter for lower income individuals and families.

The Legislature further finds that the federal law allows credit of up to 9 percent each year over a 10-year period for expenses for new construction and rehabilitation of each qualifying low-income unit.

A credit up to 4 percent each year over a 10-year period is provided for the expenses of acquisition or rehabilitation of an existing building, generally not placed in service within the last 10 years, and construction and rehabilitation of each qualifying low-income unit financed with tax-exempt bonds or similar federal subsidies.

The Legislature further finds that the federal law limits the low-income housing tax credits that can be annually issued by each state to an amount equal to one dollar and twenty-five cents ($1.25) multiplied by the state population. This credit authorization is to be allocated by the state housing credit agency. Not less than 10 percent of that amount is required to be set aside for projects involving nonprofit organizations.

The Legislature further finds that it is the intent of Congress that the credit agency reduce the credit percentage when financing and rental assistance for a project from all sources are sufficient to provide the continuing operation of the qualifying low-income building without the maximum credit.

The Legislature further finds and declares that it is necessary to designate the state housing credit agency and to establish an allocation system for the low-income housing credit.

50199.8. This chapter is enacted to implement the low-income housing tax credit established by the federal Tax Reform Act of 1986 (Public Law 99-514) in Section 42 of the Internal Revenue Code (26 U.S.C. Sec. 42).

To the extent that any provision of this chapter is held to be inconsistent with, or repugnant to, federal law, the provision shall be given effect in accordance with its terms to the greatest extent possible and consistent with the federal law and inconsistency shall have no effect on the remaining provisions of this chapter.

50199.9. As used in this chapter:

(a) "Committee" means the Mortgage Bond and Tax Credit Allocation Committee.

(b) "Housing credit" means the tax credit for low-income rental housing provided under Section 42 of the federal Internal Revenue Code (26 U.S.C. Sec. 42).

(c) "Housing credit applicant" means any owner or prospective owner of a qualifying low-income building or project who applies through the agency, the department, or a local agency for either of the following:

(1) An allocation of a portion of the current state housing credit ceiling.

(2) A reservation of a portion of the anticipated state housing credit ceiling of a subsequent year.

(d) "Housing credit ceiling" means the amount specified in Section 42(h)(3)(C) of the federal Internal Revenue Code. (26 U.S.C. Sec. 42(h)(3)(C)).

(e) "Local agency" means a city, county, or city and county.

(f) "Qualified low-income building" or "project" has the meaning specified in Section 42(c)(2) of the federal Internal Revenue Code

(26 U.S.C. Sec. 42(c)(2)).

50199.10. (a) For purposes of allocating low-income housing credits, the committee is hereby designated as this state's housing credit agency for purposes of Section 42(h) of the federal Internal Revenue Code (26 U.S.C. Sec. 42(h)). The committee shall annually determine and shall allocate the state ceiling in accordance with this chapter and in conformity with federal law. The committee shall determine the housing credit ceiling as soon as possible following the effective date of this chapter and thereafter following the commencement of each calendar year.

(b) The committee shall develop and provide application forms for use by housing credit applicants. The committee shall adopt uniform procedures for submission and review of applications of housing credit applicants, including fees to defray the committee's costs in administering this chapter. In the committee's discretion, the fees shall either be charged to a housing credit applicant as a condition of submitting an application or as a condition of receiving an allocation or reservation of the state's current or anticipated housing credit ceiling.

(c) In addition to allocating the current housing credit ceiling, the committee may reserve a portion of the state's anticipated housing credit ceiling for a subsequent year for a housing credit applicant.

(d) As a condition to making an allocation of the housing credit ceiling or a reservation of the anticipated housing credit ceiling for a subsequent year, the committee may require the housing credit applicant receiving the allocation or reservation to deposit with the committee an amount of money as a good-faith undertaking. The committee shall adopt policies for determining when deposits will be required, prescribing procedures for return of deposits, and specifying the circumstances under which the deposits will be forfeited in whole or in part for failure to timely utilize the allocation or reservation provided to the housing credit applicant.

(e) The committee may make any allocation or reservation of the state's housing credit ceiling to a housing credit applicant subject to terms and conditions in furtherance of the purposes of this part. The committee may condition an allocation or reservation on the execution of a contract between the housing credit applicant and the committee or the state or local agency through which the application was submitted, or both the committee and the state or local agency, requiring the housing credit applicant to comply with all the terms of Section 42 of the federal Internal Revenue Code, any applicable state laws, and any additional requirements which the committee deems necessary or appropriate to serve the purposes of this chapter, and providing for legal action to obtain specific performance or monetary damages for breach of contract.

50199.11. The committee shall adopt procedures for review, processing, and forwarding of applications specified in Section 50199.10 by the department, agency, and local agencies. The department, agency, and local agencies may adopt guidelines for

acceptance, review, and action on applications of housing credit applicants under this chapter and may establish and collect fees from housing credit applicants to defray administrative costs in processing the applications.

50199.12. The committee shall adopt and supply forms for eliciting information for purposes of this chapter from housing credit applicants, the department, agency, and local agencies. The department, agency, local agencies, and housing credit applicants shall provide the committee with any information requested by the committee in performing its duties and responsibilities under this chapter.

50199.13. No allocation or reservation of the housing credit ceiling under this chapter may be transferred by the housing credit applicant, unless the specific, written approval of the committee is obtained prior to the proposed transfer. Any tranfer of an allocation or reservation shall be in writing and shall be subject to terms and conditions established by the committee.

50199.14. The committee, at any time, may announce priorities or set aside a portion of the current or anticipated housing credit ceiling. In order to promote the provision of affordable low-income housing within and throughout the state, the committee shall consider the following priority usages in allocating the housing credit ceiling:

(a) Projects which have been government-assisted affordable housing projects and which are eligible to convert to market-rate rental units.

(b) Projects which enhance the benefit of state or local financial and nonfinancial resources.

(c) Projects targeted to those special needs groups identified in the California Statewide Housing Plan.

(d) Projects which commit to providing a greater percentage of low-income units or for a longer period of time than is required in Section 42 of the federal Internal Revenue Code (26 U.S.C. Sec. 42).

(e) Projects which maximize the utilization of credits available to the state.

(f) Projects which meet the special housing needs of rural areas, as defined by Section 50101.

50199.15. The committee shall annually submit to the Legislature by January 1 of each year a report specifying, with respect to its activities under this chapter during the previous calendar year, (1) the total amount of low-income housing credits allocated by the committee, (2) the total number of units in buildings assisted by the credit that are occupied by very low income households and lower income households whose income is 60 percent or less of area medium gross income, (3) the amount of the credit allocated to each building, the other financing available to the building, and the number of units therein occupied by very low income households and lower income households whose income is 60 percent or less of area medium gross income, and (4) sufficient information to identify

the building and the taxpayer receiving the low-income housing credit therefor.

50199.16. All acts and proceedings taken by the committee prior to the effective date of this chapter to allocate the housing credit ceiling for 1987 under the Governor's proclamation dated February 27, 1987, are hereby confirmed, validated, and declared legally effective.

50199.17. The committee may adopt, amend, or repeal rules and regulations for allocation of housing credits for the 1987 calendar year without complying with the procedural requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. These rules and regulations shall be effective upon adoption by the committee. However, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall be applicable to the adoption, amendment, or repeal of rules and regulations for allocation of housing credits for years subsequent to 1987.

50199.18. This chapter shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1991, deletes or extends that date. However, repeal of this chapter shall not invalidate or in any way affect the duration of any previously allocated low-income tax credits.

SEC. 4. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the Mortgage Bond and the Tax Credit Allocation Fee Account in the General Fund for support of the Mortgage Bond and Tax Credit Allocation Committee for the 1987–88 fiscal year.

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:

Under federal law a low-income housing tax credit is available for residential rental property placed in service between January 1, 1987, and December 31, 1989, and in certain cases as late as December 31, 1990. Therefore, to ensure that the 1987 allocation can be used in a timely fashion it is necessary that this act go into effect immediately.

CHAPTER 659

An act to amend Section 1356 of the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987]

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 ($4,000) 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 October 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.

CHAPTER 660

An act to amend Sections 5353, 5359, and 5377.1 of, and to add Section 5385.5 to, the Public Utilities Code, relating to carriers, and making an appropriation therefor.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Section 5353 of the Public Utilities Code is amended to read:

5353. This chapter does not apply to any of the following:

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

(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 Article 2 (commencing with Section 1031) of Chapter 5 of Part 1 of Division 1.

(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 an owned or leased vehicle, or by a nonprofit agricultural cooperative association organized and acting within the scope of its powers under Chapter 1 (commencing with Section 54001) of Division 20 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 the services has obtained any permit required from the Tahoe Basin Transportation Authority or the City of South Lake Tahoe, or both.

SEC. 1.5. Section 5353 of the Public Utilities Code is amended to read:

5353. This chapter does not apply to any of the following:

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

ordinance.

(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 Article 2 (commencing with Section 1031) of Chapter 5 of Part 1 of Division 1.

(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 an owned or leased vehicle, or by a nonprofit agricultural cooperative association organized and acting within the scope of its powers under Chapter 1 (commencing with Section 54001) of Division 20 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, including vehicles employed to transport developmentally disabled persons for regional centers established pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code.

(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 the services has obtained any permit required from the Tahoe Basin Transportation Authority or the City of South Lake Tahoe, or both.

SEC. 2. Section 5359 of the Public Utilities Code is amended to read:

5359. "Motor vehicle" means a vehicle which is self-propelled.

SEC. 3. Section 5377.1 of the Public Utilities Code is amended to read:

5377.1. No certificate issued pursuant to, or rights to conduct any of the services authorized by, this article shall be sold, leased, or assigned, or otherwise transferred or encumbered, unless authorized by the commission. A filing fee of three hundred dollars ($300) shall accompany all applications.

SEC. 4. Section 5385.5 is added to the Public Utilities Code, to read:

5385.5. For motor vehicles designed to carry not more than eight passengers, including the driver, the commission shall issue a suitable decal for purposes of Section 5385, for each vehicle registered with the commission and operated by a charter-party carrier of passengers holding a valid permit or certificate of public convenience and necessity. The decal shall be affixed to the lower right hand corner of the windshield of each registered motor vehicle.

SEC. 5. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the Public Utilities Commission Transportation Reimbursement Account in the General Fund to the Public Utilities Commission for purposes of this act.

SEC. 6. Section 1.5 of this bill incorporates amendments to Section 5353 of the Public Utilities Code proposed by both this bill and AB 41. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1988, (2) each bill amends Section 5353 of the Public Utilities Code, and (3) this bill is enacted after AB 41, in which case Section 5353 of the Public Utilities Code, as amended by AB 41, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 661

An act to amend Section 25208.13 of the Health and Safety Code, relating to surface impoundments.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Section 25208.13 of the Health and Safety Code is amended to read:

25208.13. (a) If the regional board determines that certain

mining wastes have properties so that the wastes do not pollute or threaten to pollute the waters of the state when discharged into a surface impoundment which is in compliance with all applicable regulations adopted by the state board pursuant to Division 7 (commencing with Section 13000) of the Water Code, the regional board may exempt a surface impoundment into which these mining wastes are discharged from Sections 25208.4 and 25208.5, pursuant to subdivision (b).

(b) A person may apply to a regional board authorized pursuant to subdivision (a) for an exemption from Section 25208.4 or 25208.5, or from both sections, for a surface impoundment, into which mining wastes are discharged by filing an application with the regional board. If the surface impoundment was constructed before January 1, 1984, the person shall file the application with a regional board by January 1, 1986. The initial application for exemption shall include a completed hydrogeological assessment report which contains the accurate data and documentation specified in Section 25208.8. A regional board may grant the applicant an exemption from Section 25208.4 or 25208.5, or both, if the regional board makes both of the following findings:

(1) The applicant for the exemption has fully complied with all the applicable regulations adopted by the state board for mining waste.

(2) The surface impoundment does not pollute or threaten to pollute the waters of the state.

(c) If the regional board grants an exemption pursuant to subdivision (b), the regional board shall revise the waste discharge requirements prescribed pursuant to Section 13263 of the Water Code for that surface impoundment based upon a review of the report and shall include conditions in the waste discharge requirement to ensure that the waters of the state will not be polluted or threatened with pollution. If the regional board does not grant the exemption within two years of the date of application, the applicant shall comply with the requirements specified in either Section 25208.4 or 25208.5, or with both sections, whichever is applicable, within three years from the initial date of application.

(d) An exemption granted pursuant to subdivision (b) shall not be effective for more than five years. A regional board shall not renew the exemption unless the regional board makes the findings specified in subdivision (b).

(e) Applications for an exemption or renewal of an exemption shall be accompanied by the fee specified in the fee schedule adopted by the state board pursuant to Section 25208.3.

(f) If a regional board determines that a surface impoundment granted an exemption pursuant to subdivision (b) is polluting the waters of the state, the regional board shall take all of the actions specified in Section 25208.6.

CHAPTER 662

An act to amend Sections 55435.5, 55523, 55527.5, 55862.7, 56133.5, 56189, and 56573.5 of, and to add Sections 55523.1, 55523.2, 55523.3, 55523.4, 55523.5, 55523.6, 55527.6, 56136, 56189.5, 56252.1, and 56252.2 to, the Food and Agricultural Code, relating to agricultural products, and making an appropriation therefor.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Section 55435.5 of the Food and Agricultural Code is amended to read:

55435.5. (a) Except with the approval of the director, no person licensed under this chapter shall employ any person as an agent who is, or has been, responsibly connected with any licensee or business requiring a license:

(1) Whose license has been revoked or is currently suspended by the director.

(2) Who has been found, after notice and an opportunity for hearing, to have committed any flagrant or repeated violation of this chapter or Chapter 7 (commencing with Section 56101). This paragraph does not apply to any case in which the license of the person found to have committed the violation was suspended and the suspension period has expired or is not in effect.

(3) Who failed to pay producer claims for which they were liable that arose out of the conduct of a business licensed or required to be licensed under this chapter or Chapter 7 (commencing with Section 56101).

(b) The director may approve the employment of any person covered under subdivision (a), if the licensee furnishes and maintains a surety bond in the form and amount satisfactory to the director, but which shall not be less than ten thousand dollars ($10,000), as assurance that the licensee's business will be conducted in accordance with this chapter and that the licensee will pay all amounts due California producers. The director may approve employment without a surety bond after the expiration of four years from the effective date of the applicable disciplinary order. The director, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond, but in no case shall the bond be reduced below ten thousand dollars ($10,000). A licensee who is notified by the director to provide a bond in an increased amount shall do so within a reasonable time to be specified by the director, and if the licensee fails to do so, the approval of employment shall automatically terminate. The director may, after 30 days' notice and an opportunity for a hearing, suspend or revoke the license of any

licensee who, after the date given in the notice, continues to employ any person in violation of this section.

(c) As determined by the director, no person, other than a corporate officer, licensed and employed as an agent shall control the business of the licensee. For purposes of this subdivision, "control" includes, but is not limited to, possession, either direct or indirect, of the power to direct, or cause the direction of, the management and policies of the licensee. Violation of this subdivision, after notice and an opportunity for a hearing, constitutes grounds for revocation by the director of the license of the licensee or agent, or both.

SEC. 2. Section 55523 of the Food and Agricultural Code is amended to read:

55523. Each application shall state all of the following:

(a) The full name of the applicant.

(b) If the applicant is a firm, exchange, association, or corporation, the full name of each member of the firm or the names of the officers of the exchange, association, or corporation.

(c) The principal business address of the applicant in this state.

(d) The name of every person who is authorized to receive and accept service of summons for the applicant.

SEC. 3. Section 55523.1 is added to the Food and Agricultural Code, to read:

55523.1. In addition to the other requirements of this chapter, each application for a license, except for the renewal of a license or an application for a cash buying processor license, shall include a balance sheet or statement of financial position, which presents fairly the financial condition as of the applicant's most recent year end. The financial statement, if not prepared by a public accountant or certified public accountant, shall be on a form prescribed by the director and shall be submitted under penalty of perjury. Any balance sheet submitted which does not provide the information required by the director may be rejected until the information is provided.

SEC. 4. Section 55523.2 is added to the Food and Agricultural Code, to read:

55523.2. Any balance sheet or financial statement submitted as required by this chapter that shows the applicant to be in an unsound financial condition which impairs the ability to pay farm products creditors in full for farm products received or handled is sufficient grounds to deny the application for license or the renewal of a license. The denial of the application for a license or renewal of a license relating to an unsound financial condition shall include a notice and an opportunity for a hearing.

SEC. 5. Section 55523.3 is added to the Food and Agricultural Code, to read:

55523.3. (a) If the director is not satisfied that an applicant or licensee is financially responsible, the director may, in lieu of denying, suspending, or revoking the license, accept an irrevocable guarantee of the obligations of the licensee to all California farm

product creditors. The guarantee shall be for any periods and in any amounts that the director may, from time to time, require. The director may, as a condition of accepting and maintaining the guarantee, require the guarantor to supply financial information to the director at times and to the extent the director deems advisable.

(b) A guarantee placed with the director pursuant to subdivision (a) shall support an action in a court of competent jurisdiction by a farm products creditor for obligations of the licensee to the creditor and by a state officer for the obligations of the licensee to the state related to transactions subject to the guarantee.

SEC. 6. Section 55523.4 is added to the Food and Agricultural Code, to read:

55523.4. If at any time the director has cause or reason to believe that any licensee is in an unsound financial condition so as to impair his or her ability to pay farm products creditors in full for farm products received or handled, or for any reason the director deems advisable, the director may require the licensee to file with him or her a balance sheet or statement of financial position which presents fairly the financial condition of the licensee. The financial statement, if not prepared by a public accountant or certified public accountant, shall be on a form prescribed by the director and shall be submitted under penalty of perjury. Any balance sheet submitted which does not provide the information required by the director may be rejected until the information is provided.

SEC. 7. Section 55523.5 is added to the Food and Agricultural Code, to read:

55523.5. Failure to file a financial statement as required by this chapter is a violation of this chapter.

SEC. 8. Section 55523.6 is added to the Food and Agricultural Code, to read:

55523.6. Any financial statement submitted to the director in support of a license application made pursuant to this chapter is confidential and shall not be divulged except at a hearing before the director or under subpoena, if necessary, for the proper determination of any court proceedings.

SEC. 9. Section 55527.5 of the Food and Agricultural Code is amended to read:

55527.5. Any person who is adjudicated liable for payment of a claim for farm products which arose out of the conduct of a business licensed or required to be licensed under this chapter or Chapter 7 (commencing with Section 56101), and who has not made full settlement with all producer-creditors, shall not be licensed by the director as a principal for four years from the date of the adjudication.

SEC. 10. Section 55527.6 is added to the Food and Agricultural Code, to read:

55527.6. (a) Licensees or applicants for a license shall be required to furnish and maintain a surety bond in a form and amount satisfactory to the director, if within the preceding four years the

director determines that they have done any of the following:

(1) Engaged in conduct which demonstrates a lack of financial responsibility including, but not limited to, delinquent accounts payable, judgments of liability, insolvency, or bankruptcy.

(2) Failed to assure future financial responsibility unless a surety bond is posted.

(3) Otherwise violated this chapter which resulted in license revocation.

(b) The bond shall not be less than ten thousand dollars ($10,000) or 20 percent of the annual dollar volume of business based on farm product value returned to the grower, whichever is greater, as assurance that the licensee's or applicant's business will be conducted in accordance with this chapter and that the licensee or applicant will pay all amounts due farm products creditors.

(c) The director, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond, but in no case shall the bond be reduced below ten thousand dollars ($10,000). A licensee who is notified by the director to provide a bond in an increased amount shall do so within a reasonable time as specified by the director. If the licensee fails to do so, the director may, after a notice and opportunity for a hearing, suspend or revoke the license of the licensee.

SEC. 11. Section 55862.7 of the Food and Agricultural Code is amended to read:

55862.7. (a) If any person is found to be operating a business without the license required by Section 55521, or failed to pay a fee in accordance with the schedule in subdivision (b) of Section 55861, that person shall pay to the director double the amount of the license fee due pursuant to this chapter.

(b) In addition to subdivision (a), if any person is found to be operating a business within the past five years without a license required by Section 55521, or failed to pay the fees in accordance with the schedule in subdivision (b) of Section 55861, that person shall pay to the director an amount equal to that portion of the fees which were not paid for the last five years the business has operated.

SEC. 12. Section 56133.5 of the Food and Agricultural Code is amended to read:

56133.5. (a) Except with the approval of the director, no person licensed under this chapter shall employ any person as an agent, who is or has been responsibly connected with any licensee or business requiring a license:

(1) Whose license has been revoked or is currently suspended by the director.

(2) Who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of this chapter or Chapter 6 (commencing with Section 55401). This provision will not apply to any case in which the license of the person found to have committed the violation was suspended and the suspension period

has expired or is not in effect.

(3) Who failed to pay producer claims for which they were liable that arose out of the conduct of a business licensed or required to be licensed under this chapter or Chapter 6 (commencing with Section 55401).

(b) The director may approve employment of any person covered by subdivision (a) if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the director, but which shall not be less than ten thousand dollars ($10,000), as assurance that the licensee's business will be conducted in accordance with this chapter and that the licensee will pay all amounts due farm products creditors. The director may approve employment without a surety bond after the expiration of four years from the effective date of the applicable disciplinary order. The director, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond, but in no case shall the bond be reduced below ten thousand dollars ($10,000). A licensee who is notified by the director to provide a bond in an increased amount shall do so within a reasonable time to be specified by the director. If the licensee fails to do so, the approval of employment shall automatically terminate. The director may, after 30 days' notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in the notice, continues to employ any person in violation of this section.

(c) As determined by the director, no person, other than a corporate officer, licensed and employed as an agent, shall control the business of the licensee. For purposes of this subdivision, "control" includes, but is not limited to, possession, either direct or indirect, of the power to direct, or cause the direction of, the management and policies of the licensee. Violation of this subdivision, after notice and an opportunity for a hearing, constitutes grounds for revocation by the director of the license of the licensee or agent, or both.

SEC. 13. Section 56136 is added to the Food and Agricultural Code, to read:

56136. (a) No person, other than a corporate officer, licensed and employed as an agent, shall control the business of the licensee, as determined by the director.

(b) For purposes of this section, "control" includes, but is not limited to, possession, either direct or indirect, of the power to direct or cause the direction of the management and policies of the licensee.

(c) Violation of this section shall, after notice and opportunity for hearing, constitute grounds for license revocation of either, or both, the licensee or agent by the director.

SEC. 14. Section 56189 of the Food and Agricultural Code is amended to read:

56189. Any person who is adjudicated liable for payment of a claim for farm products that arose out of the conduct of a business

licensed or requiring a license under this chapter or Chapter 6 (commencing with Section 55401), and who has not made full settlement with all producer-creditors, shall not be licensed by the director as a principal for four years from the date of the adjudication.

SEC. 15. Section 56189.5 is added to the Food and Agricultural Code, to read:

56189.5. (a) Licensees or applicants for a license shall be required to furnish and maintain a surety bond in a form and amount satisfactory to the director, if within the preceding four years the director determines that they have done any of the following:

(1) Engaged in conduct which demonstrates a lack of financial responsibility including, but not limited to, delinquent accounts payable, judgments of liability, insolvency, or bankruptcy.

(2) Failed to assure future financial responsibility unless a surety bond is posted.

(3) Otherwise violated this chapter which resulted in license revocation.

(b) The bond shall not be less than ten thousand dollars ($10,000) or 20 percent of the annual dollar volume of business based on farm product value returned to the grower, whichever is greater, as assurance that the licensee's or applicant's business will be conducted in accordance with this chapter and that the licensee or applicant will pay all amounts due farm products creditors.

(c) The director, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond, but in no case shall the bond be reduced below ten thousand dollars ($10,000). A licensee who is notified by the director to provide a bond in an increased amount shall do so within a reasonable time as specified by the director. If the licensee fails to do so, the director may, after notice and opportunity for hearing, suspend or revoke the license of any licensee.

SEC. 16. Section 56252.1 is added to the Food and Agricultural Code, to read:

56252.1. Any balance sheet or financial statement submitted as required by this chapter that shows the applicant to be in an unsound financial condition so as to impair the ability to pay farm products creditors in full for farm products received or handled is sufficient grounds to deny the application for a license or the renewal of a license. The denial of the application for a license or renewal of a license relating to an unsound financial condition shall include a notice and an opportunity for a hearing.

SEC. 17. Section 56252.2 is added to the Food and Agricultural Code, to read:

56252.2. (a) If the director is not satisfied that an applicant or licensee is financially responsible, the director may, in lieu of denying, suspending, or revoking the license, accept an irrevocable guarantee of the obligations of the licensee to all California farm

products creditors. The guarantee shall be for any periods and in any amounts that the director may from time to time require. The director may, as a condition of accepting and maintaining the guarantee, require the guarantor to supply financial information to the director at times and to the extent the director deems advisable.

(b) A guarantee placed with the director pursuant to subdivision (a) shall support an action in a court of competent jurisdiction by a farm products creditor for obligations of the licensee to the creditor and by a state officer for the obligations of the licensee to the state related to transactions subject to the guarantee.

SEC. 18. Section 56573.5 of the Food and Agricultural Code is amended to read:

56573.5. (a) If any person is found to be operating a business without the license required by Section 56181 or failed to pay the fee in accordance with the schedule in subdivision (b) of Section 56571, that person shall pay to the director double the amount of the license fee due pursuant to this chapter.

(b) In addition to subdivision (a), if any person is found to be operating a business within the past five years without a license required by Section 56181, or failed to pay the fees in accordance with the schedule in subdivision (b) of Section 56571, that person shall pay to the director an amount equal to that portion of the fees which were not paid for the last five years the business has operated.

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 663

An act to add Section 199.27 to the Health and Safety Code, relating to health.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987]

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

SECTION 1. Section 199.27 is added to the Health and Safety Code, to read:

199.27. (a) Any person receiving a test for the presence of antibodies to human immunodeficiency virus (HIV) may disclose the identity of any sexual partners or any person with whom he or she has shared the use of hypodermic needles, to the county health officer, after the person has signed a consent form, provided by the person's physician or designee who has administered the test, which

acknowledges that the person is making this disclosure voluntarily.

(b) If a signed consent form has been provided by the person designated by the physician to administer the test, the signed consent form shall be forwarded by the physician's designee to the physician. The physician shall forward any consent forms signed pursuant to subdivision (a) to the county health officer.

(c) The county health officer may alert the sexual partners or the partners of shared needles about their exposure, without disclosing any identifying information about the individual making the disclosure, and shall refer any person to whom a disclosure is made pursuant to this subdivision to alternative test sites where they may wish to obtain testing.

(d) The county health officer shall keep confidential the seropositivity status of the individual making the contact disclosure and the identities of the persons contacted.

(e) Except as provided in Section 1603.1 or 1603.3, no person shall be compelled in any state, county, city, or local civil, criminal, administrative, legislative, or other proceedings to identify or provide identifying characteristics which would identify any individual making a contact disclosure or named as a contact pursuant to this section.

CHAPTER 664

An act to amend Sections 12740, 12740.1, and 12753 of the Insurance Code, relating to home protection contracts.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Section 12740 of the Insurance Code is amended to read:

12740. The definitions used in this section govern the construction and terms used in this part but shall not affect any other provisions of this code:

(a) "Home protection contract" means a contract or agreement whereby a person, other than a builder, seller, or lessor of the home which is the subject of the contract, undertakes for a specified period of time, for a predetermined fee, to repair or replace all or any part of any component, system or appliance of a home necessitated by wear and tear, deterioration or inherent defect arising during the effective period of the contract, and, in the event of an inspection conducted pursuant to subdivision (b) of Section 12761, or by the failure of that inspection to detect the likelihood of any such loss.

The contract shall provide for a system of service for effectuating such repair or replacement and shall not include protection against

consequential damage from the failure of any component, system or appliance.

(b) "Home protection company" means any person licensed pursuant to this part which issues home protection contracts.

(c) (1) "Protection contract fee" means the consideration received, or to be received, by a home protection company for the issuance of any home protection contract.

A home protection contract fee shall be the fee established by a home protection company for coverage extending one year from the effective date of the contract. Where initial coverage is provided for a period in excess of one year, the home protection contract fee shall be the annual fee, plus a separately stated pro rata portion of the annual fee for the period of coverage which exceeds one year.

(2) Subject to the provisions of paragraph (3) of subdivision (a) of Section 12764, in the event coverage is provided prior to the time that an interest in the residential property to which it attaches is sold, the fee shall consist of a pro rata portion of the annual contract fee in effect on the date of commencement of coverage, prorated for the period beginning with the date of commencement of coverage and ending on the date of transfer of title to the residential property to which the contract attaches, and the annual contract fee for coverage commencing with the transfer of title to the affected residential property.

(d) "Home" or "residential property" as used in this part means any single or multiple unit or units, including mobilehomes, (as defined in Health and Safety Code Section 18211) used primarily for residential purposes.

(e) This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1990, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1990, pursuant to Section 9611 of the Government Code, Section 12740 of the Insurance Code, as amended by Section 2 of Chapter 820 of the Statutes of 1981, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 2. Section 12740.1 of the Insurance Code is amended to read:

12740.1. Paragraph (2) of subdivision (c) of Section 12740 does not apply to those home protection contracts issued by a franchisor, or its parent, subsidiary, or affiliate to which the provisions of Section 12765 have been applied during the period from January 1, 1983, through December 31, 1985, subject to all of the following conditions:

(a) The franchisor, its parent, subsidiary, or affiliate provides as a precondition to the issuance of its home protection contract that the seller enter into an exclusive right-to-sell agreement with the franchisee for a minimum period of 90 days.

(b) This precondition was a standard policy and procedure in use by the franchisor, its parent, subsidiary, affiliate, or franchisee as of July 1, 1981.

(c) The inapplicability of paragraph (2) of subdivision (c) of Section 12740 is limited exclusively to home protection contracts issued by the franchisor, its parent, subsidiary, or affiliate upon the application of a franchisee in any real property transaction whereby the exclusive right-to-sell agreement referred to in subdivision (a) is entered into by the seller. A listing agreement of the franchisee which does not contain this exclusive right-to-sell provision shall not entitle the home protection contract to the exemption from the applicability of paragraph (2) of subdivision (c) of Section 12740 specified in this section.

(d) This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1990, deletes or extends that date.

SEC. 3. Section 12753 of the Insurance Code is amended to read:

12753. (a) A home protection company shall maintain a reserve for unearned premiums in an amount not less than 40 percent of the aggregate premiums charged on its contracts currently in force.

Amounts to be reserved shall be on a 12-month basis. Where the contract is for a period of more than 12 months, the reserve for unearned premiums for the period beyond 12 months shall be 100 percent of the pro rata portion of the contract fee attributable to the period of coverage in excess of 12 months. The unearned premium reserve for contracts exceeding 12 months shall be reduced to not less than 40 percent of the pro rata portion of the contract fee applicable to the next succeeding 12-month period, as of the first day of the succeeding 12-month period, and each succeeding 12-month period thereafter during which the contract is in effect.

Where the home protection contract provides coverage during the selling or listing period of the real property to which the contract applies, the home protection contract fee applicable to this period of coverage shall be deemed fully earned upon the close of escrow, and receipt of payment of the applicable contract fee.

(b) For purposes of this section, the reserve shall not include protection contract fees on home protection contracts to the extent provision is made for reinsurance of the outstanding risk on those contracts.

(c) The commissioner may, by regulation, prescribe the format by which the reserve shall be reported.

SEC. 4. It is the intent of the Legislature in enacting and providing for the subsequent repeal of this act to allow sufficient time to permit analysis and review of the existing delivery system for home protection contracts by the Blue Ribbon Task Force on Financial Services to be created by Senate Bill 1465 of the 1987–88 Regular Session, and, based upon recommendations, to make appropriate changes in the law governing home protection companies.

SEC. 5. Section 12740 of the Insurance Code, as amended by Section 2 of Chapter 820 of the Statutes of 1981, is amended to read:

12740. The definitions used in this section govern the

construction and terms used in this part but shall not affect any other provisions of this code:

(a) "Home protection contract" means a contract or agreement whereby a person, other than a builder, seller, or lessor of the home which is the subject of the contract, undertakes for a specified period of time, for a predetermined fee, to repair or replace all or any part of any component, system or appliance of a home necessitated by wear and tear, deterioration or inherent defect, arising during the effective period of the contract, and, in the event of an inspection conducted pursuant to subdivision (b) of Section 12761, by the failure of that inspection to detect the likelihood of any such loss.

Such contract shall provide for a system of service for effectuating such repair or replacement and shall not include protection against consequential damage from the failure of any component, system or appliance.

(b) "Home protection company" means any person licensed pursuant to this part which issues home protection contracts.

(c) "Protection contract fee" means the consideration received, or to be received, by a home protection company for the issuance of any home protection contract.

A home protection contract fee shall be the fee established by a home protection company for coverage extending one year from the effective date of the contract. Where initial coverage is provided for a period in excess of one year, the home protection contract fee shall be the annual fee, plus a separately stated pro rata portion of the annual fee for the period of coverage which exceeds one year.

(d) "Home" or "residential property" as used in this part means any single or multiple unit or units, including mobilehomes, (as defined in Health and Safety Code Section 18211) used primarily for residential purposes.

SEC. 6. Section 12753 of the Insurance Code is amended to read:

12753. (a) A home protection company shall maintain a reserve for unearned premiums in an amount not less than 40 percent of the aggregate premiums charged on its contracts currently in force.

Amounts to be reserved shall be on a 12-month basis. Where the contract is for a period of more than 12 months, the reserve for unearned premiums for the period beyond 12 months shall be 100 percent of the pro rata portion of the contract fee attributable to the period of coverage in excess of 12 months. The unearned premium reserve for contracts exceeding 12 months shall be reduced to not less than 40 percent of the pro rata portion of the contract fee applicable to the next succeeding 12-month period, as of the first day of the succeeding 12-month period, and each succeeding 12-month period thereafter during which the contract is in effect.

Where the home protection contract provides coverage during the selling or listing period of the real property to which the contract applies, the home protection contract fee applicable to this period of coverage shall be deemed fully earned upon the close of escrow, and receipt of payment of the applicable contract fee.

(b) For purposes of this section, such reserve shall not include protection contract fees on home protection contracts to the extent provision is made for reinsurance of the outstanding risk on such contracts.

(c) The commissioner may, by regulation, prescribe the format by which the reserve shall be reported.

SEC. 7. If Senate Bill 1465 of the 1987–88 Regular Session is enacted either before or after this act, and this act is enacted, then Sections 1, 2, 3, and 4 of this act shall become operative and Sections 5 and 6 shall not become operative. However, if Senate Bill 1465 is not enacted, and this act is enacted, then Sections 1, 2, 3, and 4 of this act shall not become operative and Sections 5 and 6 of this act shall become operative.

CHAPTER 665

An act to amend Sections 33334.2 and 33641 of the Health and Safety Code, and to add Section 7280.5 to the Revenue and Taxation Code, relating to local public entities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987]

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

SECTION 1. Section 33334.2 of the Health and Safety Code is amended to read:

33334.2. (a) Not less than 20 percent of all taxes which are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing and improving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, unless one of the following findings is made:

(1) That no need exists in the community to improve or increase the supply of low- and moderate-income housing in a manner which would benefit the project area.

(2) That some stated percentage less than 20 percent of the taxes which are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing need.

(3) That a substantial effort to meet low- and moderate-income housing needs in the community is being made, and that this effort, including the obligation of funds currently available for the benefit of the community from state, local, and federal sources for low- and moderate-income housing alone or in combination with the taxes allocated under this section, is equivalent in impact to the funds

otherwise required to be set aside pursuant to this section. The legislative body shall consider the need which can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan.

(b) Within 10 days following the making of a finding under subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding.

(c) In any litigation to challenge or attack a finding made under subdivision (a), (b), or (c), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purpose of this section, the agency may exercise any or all of its powers, including the following:

(1) Acquire land or building sites.

(2) Improve land or building sites with onsite or offsite improvements.

(3) Donate land to private or public persons or entities.

(4) Construct buildings or structures.

(5) Acquire buildings or structures.

(6) Rehabilitate buildings or structures.

(7) Provide subsidies to, or for the benefit of, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093.

(8) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(9) Maintain the community's supply of mobilehomes.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that such use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds before the redevelopment plan is adopted, that the provision of low- and

moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after the effective date of this section, or for any area which is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

(j) (1) Notwithstanding Sections 50079.5, 50093, and 50105, for purposes of providing assistance to mortgagors participating in a homeownership residential mortgage revenue bond program pursuant to Section 33750, or a home financing program pursuant to Section 52020, or a California Housing Finance Agency home financing program, "area median income" means the highest of the following:

(A) Statewide median household income.

(B) Countywide median household income.

(C) Median family income for the 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.

Nothing in Section 50093 shall prevent the agency from adopting separate family size adjustment factors or programmatic definitions of income to qualify households, persons, and families for the programs of the agency.

(2) To the extent that any portion of the Low and Moderate Income Housing Fund is expended to provide assistance to mortgagors participating in programs whose income exceeds that of persons and families of low or moderate income, as defined in Section 50093, the agency shall, within two years, expend or enter into a legally enforceable agreement to expend twice that sum exclusively to increase and improve the community's supply of housing available at affordable housing cost, as defined in Section 50052.5, to lower income households, as defined in Section 50079.5, of which at least 50 percent shall be very low income households, as defined in Section 50105.

(3) In addition to the requirements of subdivision (c) of Section 33413, the agency shall require that the lower and very low income dwelling units developed pursuant to this subdivision remain available at affordable housing cost to lower and very low income households for at least 30 years, except as to dwelling units developed

with the assistance of federal or state subsidy programs which terminate in a shorter period and cannot be extended or renewed.

(4) The agency shall include within the report required by Section 33080 information with respect to compliance by the agency with the requirements of this subdivision.

SEC. 2. Section 33641 of the Health and Safety Code is amended to read:

33641. An agency may issue any types of bonds which it may determine, including bonds on which the principal and interest are payable:

(a) Exclusively from the income and revenues of the redevelopment projects financed with the proceeds of the bonds, or with the proceeds together with financial assistance from the state or federal government in aid of the projects.

(b) Exclusively from the income and revenues of certain designated redevelopment projects whether or not they were financed in whole or in part with the proceeds of the bonds.

(c) In whole or in part from taxes allocated to, and paid into a special fund of, the agency pursuant to the provisions of Article 6 (commencing with Section 33670).

(d) In whole or in part from taxes imposed pursuant to Section 7202.6 of the Revenue and Taxation Code which are pledged therefor.

(e) In whole or in part from taxes imposed pursuant to Section 7280.5 of the Revenue and Taxation Code which are pledged therefor.

(f) From its revenues generally.

(g) From any contributions or other financial assistance from the state or federal government.

(h) By any combination of these methods.

SEC. 3. Section 7280.5 is added to the Revenue and Taxation Code, to read:

7280.5. (a) The redevelopment agency of any city which has levied a transient occupancy tax pursuant to Section 7280 or 7281 may also, by ordinance, levy a transient occupancy tax in accordance with this part, if the city's ordinance entitles any person subject to a transient occupancy tax under the city's ordinance to credit the amount of transient occupancy taxes due to the redevelopment agency of that city pursuant to this section against the payment of taxes due under the city's ordinance.

(b) An ordinance of a redevelopment agency imposing a transient occupancy tax pursuant to this section shall contain an enacting clause which states as follows:

"The redevelopment agency of the City of _____ does ordain as follows:"

The ordinance shall be signed by the chairperson of the agency and attested by the clerk or secretary of the agency, and shall take effect immediately upon its final passage, but shall become operative on the first day of the first calendar quarter commencing more than

180 days after adoption of the ordinance. In all other respects, the ordinance shall be introduced and passed, and notice given by publication, in the manner provided by law for general law cities.

(c) Any redevelopment agency adopting an ordinance pursuant to this section shall not levy a transient occupancy tax in excess of the rate of transient occupancy tax levied by its city, and the tax shall be levied only on accommodations located in a redevelopment project area for which the taxes are pledged pursuant to subdivision (e) of Section 33641 of the Health and Safety Code.

(d) Any pledge pursuant to Section 33641 of the Health and Safety Code made with respect to taxes imposed under this section for the payment of principal and interest on bonds of a redevelopment agency shall constitute the obligation of a contract between the redevelopment agency and the holder of the bonds and shall be protected from impairment by the United States and California Constitutions. The provisions of this section which authorize the imposition of the taxes may not be repealed during the time that any of the bonds remain outstanding.

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 facilitate the construction of developments that local agencies deem advisable, it is necessary that this act take effect immediately.

CHAPTER 666

An act to amend Sections 1327, 1329, 1331, and 1332 of, and to add Section 1327.5 to, the Health and Safety Code, relating to health.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Section 1327 of the Health and Safety Code is amended to read:

1327. (a) 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, or there exists in the facility a condition in substantial violation of this chapter or the rules and regulations adopted pursuant to this chapter, or the facility exhibits a pattern or practice of habitual violation of this chapter or the rules and regulations adopted pursuant thereto, or the facility is closing or intends to terminate operation as a licensed long-term health care facility and adequate arrangements for

relocation of residents have not been made at least 30 days prior to the closing or termination, 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 the 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 supported by an affidavit of the director. 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.

(b) If the director files a petition pursuant to subdivision (a) for appointment of a receiver to operate a long-term health care facility, in accordance with Section 564 of the Code of Civil Procedure, the director may also petition the court, in accordance with Section 527 of the Code of Civil Procedure, for an order appointing a temporary receiver. A temporary receiver appointed by the court pursuant to this subdivision shall serve until the court has made a final determination on the petition for appointment of a receiver filed pursuant to subdivision (a). A receiver appointed pursuant to this subdivision shall have the same powers and duties as a receiver would have if appointed pursuant to subdivision (a).

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 or other responsible person or entity, as determined by the court, from a list of qualified receivers established by the state department, with input from providers of long-term care and consumer representatives. The department shall consult with the Board of Examiners of Nursing Home Administrators, in order to screen potential receivers who are licensed by the board, and to determine if they are administrators in good standing. Persons appearing on the list shall have experience in the delivery of health care services, and, if feasible, shall have experience with the operation of a long-term health care facility. The receivers shall have sufficient background and experience in management and finances to ensure compliance with orders issued by the court. The owner, licensee, or administrator shall not be appointed as the receiver unless authorized by the court.

If at the conclusion of the 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 participation.

Failure of the licensee to appear at the hearing on the petition shall constitute an admission of all factual allegations contained in the petition for purposes of these 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.

SEC. 1.5. Section 1327.5 is added to the Health and Safety Code, to read:

1327.5. No person shall impede the operation of a receivership created under Section 1327. There shall be an automatic stay for a 60-day period subsequent to the appointment of a receiver, of any action that would interfere with the functioning of the facility, including, but not limited to, cancellation of insurance policies executed by the licensees, termination of utility services, attachments or set-offs of resident trust funds and working capital accounts and repossession of equipment in the facility.

SEC. 2. Section 1329 of the Health and Safety Code is amended to read:

1329. (a) When a receiver is appointed, the licensee may, at the discretion of the court, be divested of possession and control of the facility in favor of the receiver. 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. Except as provided in Section 1329.5, 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 ask the court for direction in the treatment of debts incurred prior to the appointment, where the licensee's debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the facility, or where payment of such debts will interfere with the purposes of receivership.

(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.

SEC. 3. Section 1331 of the Health and Safety Code is amended to read:

1331. (a) The receiver shall be appointed for an initial period of not more than six months. The initial six-month period may be extended for additional periods not exceeding six months, as determined by the court pursuant to this section. At the end of four 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 six-month period and will continue to maintain compliance with those 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 six-month period, the court shall take appropriate action as follows:

(1) Extend the receiver's management for an additional six months if there is a substantial likelihood that the facility will meet state standards within that period and will maintain compliance with the 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 any 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 for not more than six months from the date of initial appointment of a receiver, or 14 days, whichever is greater. An extension of an additional six months may be granted if deemed necessary by the court.

(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 those 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 the 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 the plan 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.

SEC. 4. Section 1332 of the Health and Safety Code is amended to read:

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 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.

CHAPTER 667

An act to amend Sections 2.2, 4.1, 4.2, 7.2, and 8.2 of, to add Sections 2.9, 4.5, 5.9, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 5.16, 5.17, 7.6, 7.7, 7.8, and 7.9 to, to repeal and add Sections 5.2, 5.3, and 5.4 of, and to repeal Section 8.1 of, the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), relating to the South Delta Water Agency.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987]

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

SECTION 1. Section 2.2 of the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973) is amended to read:

Sec. 2.2. Each landowner shall have one vote for each dollar's worth of land to which he holds title within the division. The last equalized assessment roll of the county in which the land is located is conclusive evidence of ownership and of the worth of the land for voting purposes. When a parcel is held as community property, in joint tenancy, or as a tenancy in common, any spouse, joint tenant, or tenant in common shall be presumed to have authority to cast votes for that parcel.

SEC. 2. Section 2.9 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 2.9. Within five days after the election, any voter may file with the San Joaquin County Election Office a written objection to the number of votes the voter was entitled to cast. The county clerk shall within five days thereafter review the objections and may recalculate in accordance with Section 2.2 the number of votes cast.

SEC. 3. Section 4.1 of the South Delta Water Agency Act (Chapter 1089 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 advise and assist landowners and local districts within the agency in reclamation and flood control matters.

SEC. 4. Section 4.2 of the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973) is amended to read:

Sec. 4.2. The agency shall also have the following powers:

(a) To have perpetual succession.

(b) To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(c) To adopt a seal and alter it at pleasure.

(d) To take by grant, purchase, gift, devise, or lease, or dispose of, real and personal property of every kind within or without the agency.

(e) To borrow money and incur indebtedness; provided, however, that with the exception of agreements provided for in Section 4.1, the agency shall not at any one time incur indebtedness in excess of the ordinary annual income and revenues of the agency; except that the agency may borrow money for its expenses incurred during the period until the agency first receives tax money.

(f) To employ labor and contract for services.

(g) To cause assessments to be levied, in the manner hereinafter provided, for the purpose of paying expenses and obligations of the agency, including its formation expenses and any warrants issued therefor.

(h) To act jointly with or cooperate with the United States and with the State of California to the end that the purposes and activities of the agency may be fully and economically performed.

(i) To make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(j) To carry on technical and other investigations of all kinds necessary or convenient for the accomplishment of the purposes or powers of the agency.

(k) To do any and every lawful act necessary in order that a sufficient in-channel water supply may be available for any present or future beneficial use or uses of the lands within the agency.

SEC. 5. Section 4.5 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 4.5. The agency shall have no authority or power to affect, bind, prejudice, impair, restrict, or limit water rights within the agency.

SEC. 6. Section 5.2 of the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973) is repealed.

SEC. 7. Section 5.2 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 5.2. The board shall fix a uniform charge per acre on each acre or fraction thereof of taxable land within the agency sufficient to pay the expenses and obligations determined pursuant to Section 5.1, unless benefit zones are established and in existence pursuant to Section 5.15.

SEC. 8. Section 5.3 of the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973) is repealed.

SEC. 9. Section 5.3 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 5.3. The amounts necessary to make payments pursuant to any and all contracts entered into by the agency pursuant to Section 4.1 shall also be determined by the board on or before the 30th day of June of each year, which amounts shall be collected in the manner provided in this article. The board shall also fix a uniform charge per acre on each acre or fraction thereof of taxable land within the agency sufficient to pay those amounts unless benefit zones are established and in existence pursuant to Section 5.15.

SEC. 10. Section 5.4 of the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973) is repealed.

SEC. 11. Section 5.4 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 5.4. The board shall certify the amounts determined pursuant to Sections 5.2 and 5.3 to the Board of Supervisors of San Joaquin County on or before the 30th day of June of each year. The county auditor, county assessor, and county tax collector of that county shall thereupon take the action as may be necessary to collect those amounts. The agency shall pay to the county the cost incurred by the county auditor, county assessor, and county tax collector in complying with this act.

SEC. 12. Section 5.9 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 5.9. The board shall annually fix and collect a charge, as provided in Sections 5.2 and 5.3, unless and until the board, on its own motion or on petition of landowners representing at least 15 percent of the lands within the agency or at least 15 percent of the voters of the agency, directs that commissioners be named to make a redetermination of the benefits received and to establish one or more zones of benefit which reflect the proportion of benefits to be derived by the lands within the respective zone or zones from the operation of the agency and from any contract the agency may have entered into. The redetermination shall be effective as of the first day of July in the next succeeding year.

SEC. 13. Section 5.10 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 5.10. For purposes of Section 5.9, the board may appoint three commissioners who have no interest in any real estate within the agency, each of whom, before entering upon his or her duties, shall make and subscribe an oath that he or she is not in any manner interested in any real estate within the agency, directly or indirectly, and that he or she will perform the duties of a commissioner to the best of his or her abilities.

SEC. 14. Section 5.11 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 5.11. The commissioners shall determine whether the agency lands should be divided into more than one zone of benefit. If the commissioners determine that the agency shall be divided into more than one zone, the zones shall be given a numerical designation starting with Zone 1 which shall be assessed at 100 percent and the

benefits received by the other zones shall be expressed in terms of relatively smaller percentages as those benefits compare with those received by Zone 1. The commissioners shall prepare a map showing the boundaries of the zones and their respective benefit percentages, and a report explaining the basis for their determination.

SEC. 15. Section 5.12 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 5.12. Upon receipt of the commissioners' map and report, the board shall schedule a hearing. Notice of the hearing shall be given in each county in which the agency is located by publishing once each week for at least two successive weeks in a newspaper of general circulation.

SEC. 16. Section 5.13 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 5.13. The notice shall state the time and place of hearing, that the purpose of the hearing is to approve the report and map of the commissioners, and the location of the place or places where the report and map may be inspected. The notice shall include a brief, generalized description of the benefit zones and percentage of benefits determined for each zone.

SEC. 17. Section 5.14 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 5.14. At the hearing, any landowner within the proposed boundaries of the benefit zone or any other interested person may offer any relevant evidence or testimony relating to the boundaries of the benefit zones or the benefits to be received. Any landowner or interested person may object to the inclusion of land within a benefit zone or may request the inclusion of any other land within the zone or a change in the percentage of benefits of any zone.

SEC. 18. Section 5.15 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 5.15. At the conclusion of the hearing, the board may alter the boundaries of benefit zones or the percentages of benefits applicable thereto and shall make an order establishing the boundaries of benefit zones and the percentages of benefits applicable thereto which shall best approximate the benefits received.

SEC. 19. Section 5.16 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 5.16. If the board orders that the agency shall be divided into more than one zone, then the charge per acre made pursuant to Section 5.2 shall be multiplied by the percentage of benefit applicable to the zone or zones within which the acreage is located, and then be increased by the factor necessary so that the total amount to be collected shall be equivalent to the amount determined to be required pursuant to Section 5.1. The charge per acre under Section 5.3 to collect annual funds required to be paid pursuant to any contracts provided for in Section 4.1 shall be adjusted in the same manner.

SEC. 20. Section 5.17 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 5.17. The board, subsequent to any redetermination of benefits made pursuant to Section 5.9, may, on its own motion or on petition of landowners representing at least 15 percent of the lands within the agency or at least 15 percent of the voters of the agency, direct that the zones of benefit or that the percentages of benefit be further redetermined in the same manner as provided in this article.

SEC. 21. Section 7.2 of the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973) is amended to read:

Sec. 7.2. The election called for the purpose of voting upon such a contract shall be conducted insofar as applicable, in the manner provided in Article 2 (commencing with Section 2.1) of this act, and may be held on any Tuesday, notwithstanding Section 2502 of the Elections Code.

SEC. 22. Section 7.6 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 7.6. The board shall not amend any contract of the nature and character authorized by Section 4.1 without a hearing, and unless no substantial written protest to the amendment is received by the board within 30 days following the date of that hearing. If a substantial written protest is received, the agency may not amend the contract unless an election is held pursuant to this article and a majority of the votes cast approve the amendment.

SEC. 23. Section 7.7 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 7.7. Written protest received from landowners representing 15 percent of the land within the agency shall constitute a substantial written protest.

SEC 24. Section 7.8 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 7.8. Notice of the hearing on the proposed amendment shall be published in the manner prescribed in Section 7.3. The notice shall describe the proposed amendment, shall specify that written protests may be filed with the agency, and shall set a date for the hearing.

SEC. 25. Section 7.9 is added to the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973), to read:

Sec. 7.9. The board shall not terminate any contract of the nature and character authorized by Section 4.1 without a hearing and following the procedure for contract amendments.

SEC. 26. Section 8.1 of the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973) is repealed.

SEC. 27. Section 8.2 of the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973) is amended to read:

Sec. 8.2. In the event of the 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 Cortese-Knox Local

Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code).

CHAPTER 668

An act to amend Section 17732 of, and to add Section 17732.3 to, the Education Code, relating to school facilities.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987.]

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

SECTION 1. It is the intent of the Legislature under this act to permit, and to provide incentives for, school districts to enter into joint ventures with public agencies, private entities, or both, in order to generate additional funds to meet their school facility and maintenance needs.

SEC. 2. Section 17732 of the Education Code is amended to read:

17732. The board shall fix rents for all projects acquired and may change the rents from time to time as may be needed provided the rents shall not in any year exceed the sum of the following:

(a) One dollar ($1).

(b) Any interest earned on funds in the county school lease-purchase fund for the district.

(c) Any unencumbered bond funds of the district.

(d) The net proceeds from the sale or lease of any school buildings or land no longer needed for school purposes, exclusive of proceeds that are used for capital outlay expenditures for school construction that conforms to building area standards established under this chapter, for revenue purposes under a joint venture as authorized by Section 17732.3, or for the district funding requirement under subdivision (b) of Section 17705.5.

SEC. 3. Section 17732.3 is added to the Education Code, to read:

17732.3. (a) Any school district for which one or more projects has been funded under this chapter may, pursuant to written agreement with any other public or private person or entity, utilize any school buildings, land, or other real property interest that the governing board determines is not needed for school purposes, and will not be needed for school purposes within the next 30 years, in a joint venture with that person or entity to generate revenues for school facilities purposes, pursuant to the following conditions:

(1) The district has developed a school district asset utilization plan, setting forth the information required under subdivision (b), which plan has been the subject of a public hearing, and the governing board of the district has made the finding that the implementation of the plan will benefit the district.

(2) Prior to the execution by the school district governing board

of any agreement regarding the utilization of the school buildings or land, or both, under a joint venture pursuant to this section, the school district asset utilization plan has been submitted for, and has received, the review and approval of the State Allocation Board. No later than 90 days after the receipt of the plan, the board shall determine whether to approve the plan, which approval shall be granted if the board finds the plan to comply with this section.

(3) Once every three years after the approval of any plan pursuant to paragraph (2), the school district shall update the plan with information regarding the disposition of the revenues received by the district from the utilization of the school buildings or land, or both, under the joint venture, including the effect of those revenues upon the school facility needs for which the district may otherwise be eligible under this chapter or under any other school facilities program administered by the board, together with such other information as the board may require, and shall resubmit the plan to the board for its review and approval. In the event that the board refuses to approve the plan on the basis that the district is no longer in substantial compliance with this section, the surplus school buildings or land, or both, utilized under the joint venture shall no longer be exempt from the rental requirements of Section 17732.

(4) Pursuant to a school district asset utilization plan approved under this section, the school district may utilize school buildings or land, or both, in a joint venture, the revenues from which shall be placed by the district in a separate fund. The principal and interest from that separate fund may be expended by the district only for the following school facilities purposes, as authorized under the approved plan, in accordance with the pupil loading and cost standards established pursuant to this chapter: the acquisition of land, new construction, reconstruction, modernization, rehabilitation, and deferred maintenance.

(b) For purposes of this section, a school district asset utilization plan shall include, but not necessarily be limited to, all of the following:

(1) A specific description of the surplus school buildings or land, or both, to be utilized under the joint venture.

(2) The identification of the current educational uses of the surplus school buildings or land, or both, and of the educational uses proposed under the joint venture.

(3) The identification of the current noneducational uses of the surplus school buildings or land, or both, and of the noneducational uses proposed under the joint venture, and a specific assessment of the compatability of those uses with any applicable general or specific governmental land use plans and with applicable zoning restrictions.

(4) A description of the prospective economic benefits to be derived by the district from the joint venture.

(5) A description of the prospective educational benefits to be derived by the district from the joint venture.

(6) A comprehensive description of the joint venture, including, but not limited to, a description of the intended means of financing the joint venture.

(7) A plan for the disposition of the revenues received by the district from the joint venture.

CHAPTER 669

An act to amend Sections 9, 14, 25.1, 25.2, and 27 of, and to add Sections 20.1, 25.4, 25.5, 25.6, 26.1, 26.2, 26.3, 26.4, 26.5, 26.6, 26.7, 26.8, 26.9, 26.10, 26.11, 26.12, 26.13, 26.14, 26.15, and 26.16 to, the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), relating to the Riverside County Flood Control and Water Conservation District.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987.]

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

SECTION 1. Section 9 of the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945) is amended to read:

Sec. 9. 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 waters thereof flow into the district, and to conserve the waters for beneficial and useful purposes by retarding, spreading, storing, retaining, and causing to percolate into the soil within the district, these waters, or to save or conserve in any manner all or any of these waters and protect from these flood or storm waters, the watercourses, watersheds, public highways, life, and property in the district, and to prevent waste of water or diminution of the water supply in, or unlawful exportation of water from the district, and to obtain, retain, and reclaim drainage, storm, flood, and other waters for beneficial use in the district.

The Riverside County Flood Control and Water Conservation District is hereby declared to be a body corporate and politic and as such shall have the following powers:

1. To have perpetual succession.

2. To adopt a seal and alter it at pleasure.

3. To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

4. To acquire, by purchase, lease, construction, or otherwise, or contract to acquire, lands, rights-of-way, easements, privileges, and property of any kind, whether real, personal, or mixed, and to construct, maintain, and operate any and all works or improvements within or without the district necessary, convenient, or proper to

carry out any of the objects or purposes of this act, and to complete, extend, add to, repair, or otherwise improve any works or improvements or property acquired by it as authorized by this act; to indemnify or compensate any owner of land or other property for any injury or damage caused by the exercise of the powers conferred by this act.

5. To take by grant, purchase, gift, devise, or lease, or otherwise, to hold, use, enjoy, and to lease or dispose of real, personal, or mixed property of every kind within or without the district necessary or convenient to the full exercise of its powers, and to lease its property to public agencies, or to grant any interest therein to public agencies, which lease or grant does not interfere with the use of the property for the purposes of the district.

6. To incur indebtedness, and to issue bonds pursuant to any of the alternative procedures herein provided.

7. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or a zone or zones thereof; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside the district, the same for any useful purpose to the district; to commence, maintain, intervene in, and compromise, in the name of the district, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of water or water rights within the district used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend, and compromise, and to assume the cost and expenses of any and all actions and proceedings hereafter begun; to prevent contamination, pollution, or otherwise rendering unfit for beneficial use the surface or subsurface water used in the district, and to commence, maintain, and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in the district. However, the district shall not have the power to intervene or take part in, or to pay the costs or expenses of actions or controversies between the owners of lands or water rights within the boundaries of the district and which do not involve taking water outside or away from the district.

8. To control 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, and to conserve these waters for beneficial and useful purposes within the district by retarding, spreading, storing, retaining, and causing to percolate into the soil within or without the district, or to save and conserve in any manner all or any of the waters and protect from damage from these flood or storm waters the watercourses, watersheds, public highways, life, and property in

the district; provided, that water rights now existing be not thereby infringed upon.

9. To exercise the right of eminent domain, either within or without the district, to take any property necessary to carry out any of the objects or purposes of this act. Nothing contained 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, from its channel, to the injury or detriment of any person, or persons, having any interest in the river, creek, stream, irrigation system, canal, or ditch, or the waters thereof or therein, unless compensation be first ascertained and paid therefor, under the laws of this state authorizing the taking of private property for public use; and provided further, that no right shall exist in behalf of the district to take by condemnation any property, including water rights, that is now devoted to beneficial use in Orange County; nor to take by condemnation any water rights or property necessary for exercising the water rights that are now devoted to beneficial use, or are now in the process of being devoted to beneficial use in Orange County, within an area along and adjacent to the trunk channel of the Santa Ana River extending from the easterly boundary of Orange County to the Jurupa Narrows and lying between the bluffs on either side of that river, but excluding therefrom any part of the Corona underground water basin as that basin is defined in that certain action in the Superior Court of the State of California, in and for the County of Riverside, numbered 22046, and entitled the Corona Foothill Lemon Company, a corporation, et al. vs. Charles E. Lillibridge, et al.

10. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines of channels, conduits, canals, pipelines, roadways, and other rights-of-way; to acquire by purchase, lease, contract, gift, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair, and improvement of these works, whether in this or in another state, including works constructed and being constructed by private owners, lands for reservoirs, for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to this end, and for these purposes and uses, to acquire and hold the stock of corporations, domestic or foreign, owning water or water rights, canals, waterworks, powerplants, franchises, concessions, or rights; to enter into and to do any and all 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 store water in any reservoirs, or to carry water through any canal, ditch, or conduit not

owned or controlled by the district; to grant any owner or lessee the right to the use of any water or the right to store this water in any reservoir of the district or to carry this water through any tunnel, canal, ditch, or conduit of the district; to enter into and to do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm, or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm, or individual of any water right or water pumped, stored, appropriated, or otherwise acquired, or secured for the use of the district, or for the purpose of exchanging the same for other water, water right, or water supply to be delivered to the district by the other party to the agreement; to cooperate with, 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 or private corporation, in the construction of any work for the controlling of flood or storm waters of said district, or for the protection of life or property therein, or for the purpose of conserving these waters for beneficial use within the district, or in any such works, acts, or purpose provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose as authorized herein.

11. To cause taxes and assessments to be levied and collected for the purpose of paying any obligation of the district and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without the district, and for the purposes the district shall have the right of access through its authorized representatives to all properties within the district.

13. 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.

SEC. 2. Section 14 of the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945) is amended to read:

Sec. 14. (a) The board of supervisors of the district shall have power in any year to do both of the following:

(1) Levy an ad valorem tax or assessment upon all taxable property in the district to pay the 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 as a whole. However, the ad valorem tax or assessment shall not exceed two and one-half cents ($0.025) on each one hundred dollars ($100) of assessed valuation. It is declared that for purposes of such a tax or assessment all property within the district is equally benefited.

(2) Levy an ad valorem tax or assessment upon all taxable

property in each or any of the zones, according to the benefits derived or to be derived by the respective zones to pay the cost and expenses of carrying out any of the objects or purposes of this act of special benefit to the respective zones, including the constructing, maintaining, operating, extending, repairing, or otherwise improving any or all works or improvements within the respective zones. Except as provided in subdivisions (b) and (c), in the case of any assessment under this act, the benefit may be determined on the basis of the proportionate storm water runoff from each parcel. It is declared that all property within a given zone that is located within a watershed or watersheds which are tributary to an existing or proposed flood control improvement is equally benefited.

(b) Whenever a railroad, gas, water, telephone, cable television, electric utility right-of-way, electric line right-of-way, or other utility right-of-way is included within an area proposed to be assessed, the railroad, gas, water, telephone, cable television, electric utility right-of-way, electric line right-of-way, or other utility right-of-way shall be subject to the assessment only if, and to the extent that, it is found that it will benefit from the service, and the railroad, gas, water, telephone, cable television, electric utility right-of-way, electric line right-of-way, or other utility right-of-way shall be subject to the same penalties, and the same procedure and sale, in the event of delinquencies, as other parcels in the assessment area. In determining whether or not the railroad, gas, water, telephone, cable television, electric utility right-of-way, electric line right-of-way, or other utility right-of-way benefits from the services provided, its use as a right-of-way for a railroad, gas, water, telephone, cable television, electric, or other utility shall be presumed to be permanent.

(c) Proportionate storm water runoff may be used as a measure of benefit on an undeveloped parcel of land pursuant to this section only if, and to the extent that, it is found that it will benefit from the service.

For the purposes of this section, "undeveloped parcel of land" means a parcel of rural land in its undeveloped natural state, although the land may be grazed, if otherwise undisturbed, in a manner consistent with the normally accepted grazing land management practices for that geographic area. "Undeveloped parcel of land" also includes wetlands and marshlands if undisturbed and subject to periodic inundation. For purposes of this section, "rural land" is land which is outside of an urbanized area as designated by the most recent federal decennial census of the United States Bureau of the Census.

(d) The taxes or assessments shall be levied and collected together with, and not separately from, taxes for county purposes, and the revenues derived from the taxes or assessments shall be paid into the county treasury to the credit of the district and the board of supervisors of the district shall have the power to control and order the expenditure thereof for those purposes. However, no revenues, or portions thereof, derived in any of the several zones from the taxes

or assessments levied under the provisions of paragraph (2) of subdivision (a) shall be expended for constructing, maintaining, operating, extending, repairing, or otherwise improving any works or improvements located in any other zone except joint projects or joint works of improvement in two or more zones or works of improvement which are for the common benefit of two or more zones. The aggregate taxes or assessments levied under this act for any one fiscal year shall not exceed forty cents ($0.40) on each one hundred dollars ($100) of assessed valuation of the taxable property in the zones exclusive of any tax levied to meet the bonded indebtedness of any of the zones and the interest thereon.

(e) Assessments levied pursuant to this section to pay the cost of constructing, maintaining, operating, extending, repairing, or otherwise improving works or improvements shall be based upon the benefit that each parcel of real property to be assessed will derive from the works and improvements to be constructed, maintained, operated, extended, or repaired. For purposes of levying any assessment, the board of supervisors may establish one or more zones of benefit, including parcels of real property which benefit similarly from those works and improvements, and may levy different assessments within those zones. The zones of benefit shall be identified and described in a resolution adopted by the board of supervisors. In levying assessments pursuant to this section, the board of supervisors may employ any of the procedures provided for in Sections 26.1 to 26.9, inclusive, which it deems appropriate. Proceedings for levying assessments pursuant to this section may be combined with proceedings for levying assessments pursuant to Sections 26.1 to 26.9, inclusive, and the procedures prescribed by those sections shall be modified as the board deems necessary to accommodate the combination of the proceedings. Assessments levied pursuant to this subdivision may, but need not be, ad valorem assessments.

SEC. 2.2. Section 20.1 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 20.1. In providing for the issuance of bonds of the district, a zone or zones, or an improvement district, the board of supervisors may provide in the resolution adopted pursuant to Section 20 for the inclusion in the aggregate principal amount of the bonds to be issued of a reserve fund for the payment of the principal of and interest on the bonds in an amount not to exceed 10 percent of the principal amount of the bonds.

SEC. 2.4. Section 25.1 of the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945) is amended to read:

Sec. 25.1. The board of supervisors may, upon complying with the requirements of Chapter 6.4 (commencing with Section 54703) of Part 1 of Division 2 of Title 5 of the Government Code, including obtaining the approval of the voters as required by Section 54717 of

the Government Code, levy a benefit assessment within any zone or an improvement district of the district to pay principal and interest on bonds of the district, the zone or zones, or improvement district which are issued to finance the cost of any work of improvement, as authorized in this act, in the zone or zones or improvement district or the improvement of any existing facility therein, if the issuance of the bonds has also been approved by the voters at the same election at which the levying of the benefit assessment was approved. The bonds shall be authorized and issued as provided in Sections 19, 20, 21, and 22, and in the case of bonds for an improvement district, Section 23.1, of this act, except that, notwithstanding Section 19, if at the election a majority of the votes cast are in favor of incurring the bonded indebtedness, the bonds may be issued for the amount stated in the proposition voted upon. The proposition regarding the issuance and sale of the bonds may be combined with the proposition regarding the benefit assessment into a single proposition on the ballot. An improvement district of the district is an "area of benefit" for purposes of Section 54715 of the Government Code.

SEC. 2.6. Section 25.2 of the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945) is amended to read:

Sec. 25.2. In the case of a benefit assessment for the payment of principal and interest on the bonds of the district, a zone or zones, or an improvement district, the annual aggregate amount of the assessment shall, notwithstanding paragraph (2) of subdivision (a) of Section 54711 of the Government Code, not exceed the amount necessary to pay the interest on the bonds and the portion of the principal thereof that will be due during the year and prior to the collection of the assessments for the next succeeding year and to pay the district's administrative expenses in connection with the levying and collection of assessments and paying the interest on, and the principal of, the bonds, including, but not limited to, fees and charges of fiscal agents and paying agents, and the amount necessary to replenish the reserve fund for the bonds to the amount required by the resolution authorizing the issuance of the bonds in the event that the reserve fund is utilized to pay principal of and interest on the bonds as a result of delinquencies in the payment of assessments.

After issuing any such bonds, the board of supervisors shall levy a benefit assessment pursuant to Chapter 6.4 (commencing with Section 54703) of Part 1 of Division 2 of Title 5 of the Government Code each year upon all taxable property in the zone or zones or improvement district of issuance sufficient to pay the interest on, and principal of, the bonds and the district's administrative expenses, and, if necessary, to replenish the reserve fund for the bonds, all as provided in this section.

SEC. 3. Section 25.4 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 25.4. If, as provided in Section 54717 of the Government

Code, less than 12 registered voters reside within an improvement district of the district for the 90 days preceding the close of the hearing required by Section 54716 of the Government Code, the proceedings for approval of the proposed assessment and the issuance of bonds shall, notwithstanding Section 23.1, be conducted in accordance with, and subject to, all provisions of Section 54717 of the Government Code.

SEC. 4. Section 25.5 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 25.5. (a) As an alternative remedy, if any benefit assessments levied by the board of supervisors for the payment of principal and interest on the bonds of the district, or a zone or zones, or an improvement district, together with any penalties and other charges accruing under the resolution or ordinance levying those benefit assessments, are not paid when due, the board of supervisors may at any time after those benefit assessments become delinquent, but not later than four years after the due date of the last installment of principal on the bonds, order those benefit assessments, penalties, and other charges to be collected by an action brought in superior court to foreclose the lien thereof.

(b) The board of supervisors may, by resolution adopted prior to the issuance of bonds to be secured and paid by benefit assessments, covenant for the benefit of the owners of the bonds to commence and diligently pursue to completion any foreclosure action regarding any delinquent benefit assessments. The resolution may specify a time limit for commencement of the foreclosure action and any other terms and conditions which the board of supervisors may determine to be reasonable regarding the foreclosure action.

SEC. 4.2. Section 25.6 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 25.6. The board of supervisors may, by resolution adopted prior to the issuance of bonds to be secured and paid by benefit assessments, specify conditions under which the obligation to pay the benefit assessments may be prepaid and permanently satisfied, and those conditions may include the payment of a redemption premium.

SEC. 5. Section 26.1 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 26.1. The board of supervisors may determine that it is necessary to sell bonds of the district or any zone or zones thereof to finance needed flood control improvements for the protection and benefit of portions of the district which the board determines cannot be financed from annual revenues from taxes or assessments, or both, over a period of years without selling bonds. The board of supervisors may also determine that it is necessary to sell bonds of the district or any zone or zones thereof to finance the local share of the cost of any

flood control improvements or projects undertaken by the federal government or the state, or both. The board of supervisors shall make these determinations by adopting a resolution indicating its intention to finance the improvements through the issuance of bonds, generally describing the improvements to be financed with the proceeds of the bonds and referring the improvements to an engineer selected by the board and therein named for the preparation and filing with the board of a report with regard to the proposed improvements. The portions of the district or any zone or zones thereof which will benefit from the sale of the bonds and the flood control improvements to be financed shall be designated in the resolution of the board making those determinations as the area of benefit for the specified project, or by some similar designation.

The report shall contain, among other things, all of the following:

(a) A general description of the improvements.

(b) Estimates of the cost of the improvements, the cost of land, rights-of-way, and easements, incidental expenses in connection with the improvements, and expenses in connection with the issuance of the bonds, and if part of the cost of the improvements will be paid from contributions from the federal government or the state, or both, an estimate of the expected total amount of those contributions.

(c) A map which shows the location of the proposed improvements and lands, rights-of-way, easements, and property to be taken, acquired or injured in carrying out the construction of the improvements, and any other information in regard to those matters as may be deemed useful. However, improvements, lands, rights-of-way, easements, and property which will be located outside the district or outside the area of benefit need not be shown on the map.

(d) A map or maps showing the location of the lots and parcels of property in the area of benefit which will derive special benefit from the proposed improvements and which are proposed to be assessed for the cost thereof.

(e) A listing by county assessor's parcel numbers of the lots and parcels of property within the area of benefit which will derive special benefit from the improvements and which are proposed to be assessed and pay annual assessments for the payment of principal and interest on the bonds, and estimated maximum amount of the annual assessment to be levied on each lot or parcel.

(f) A general analysis of the engineer's determination as to how the lots and parcels proposed to be assessed in the area of benefit and each proposed zone of benefit therein will derive special benefit from the proposed improvements.

The engineer may propose in the report that parcels of property in the area of benefit which benefit from the improvements similarly, but differently from other parcels, be included in different zones of benefit which shall be identified by boundary lines on the map or maps specified in subdivision (d). If the engineer proposes

in the report the establishment of different zones of benefit, the listing referred to in subdivision (e) shall also identify the zone of benefit in which each lot or parcel is proposed to be included.

SEC. 6. Section 26.2 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 26.2. If the improvements are proposed to provide protection against flooding in a floodway or flood plain designated on the general plan of the County of Riverside or any city therein or a flood plain area or a flood-risk zone established by the federal Secretary of Housing and Urban Development pursuant to 42 U.S.C. Sec. 4101, et seq., the fact that a lot or parcel of property is located within that floodway or flood plain or flood-risk area shall be conclusive evidence that it will derive special benefit from the improvements. Except as provided in subdivisions (b) and (c) of Section 14, assessments based on special benefit may be levied on lots and parcels of property included in an area of benefit or in zones of benefit therein on the basis of proportionate stormwater runoff. An area of benefit may include all land located within a watershed or watersheds which are tributary to proposed improvements.

SEC. 7. Section 26.3 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 26.3. (a) When the report of the engineer is filed with the board of supervisors, the board may at a regular or special meeting approve the report and schedule a hearing thereon. The hearing shall be scheduled not earlier than 30 days and not later than 90 days following approval of the report. Notice of the hearing shall be published pursuant to Section 6066 of the Government Code, and the first publication shall occur not later than 20 days before the date of the hearing. The notice to be published shall be entitled "Notice of Flood Control Improvements," and shall include all of the following:

(1) The time and place of the hearing on the proposed improvements and on the proposed bonds and annual assessments.

(2) A general description of the proposed improvements and the proposed area of benefit and reference to the report of the engineer for further particulars.

(3) A statement that the board of supervisors is considering issuing bonds to finance the cost of the proposed improvements, or the local share thereof, and the amount of bonds which would be issued.

(4) A statement that the board of supervisors is considering levying annual assessments on lots and parcels of property within the area of benefit to pay principal and interest on the bonds.

(5) The name and telephone number of an officer or employee of the district to answer inquiries regarding the protest proceedings.

(b) A notice of the time and place of the hearing shall also be mailed, postage prepaid, to all persons owning real property proposed to be assessed as their names and addresses appear on the

last equalized assessment roll for county taxes. The notices shall be mailed not later than 20 days before the date of the hearing. The notices to be mailed shall be entitled "Notice of Flood Control Improvements" and shall contain all of the following:

(1) A statement of the time, place, and purpose of the hearing on the improvements and the proposed annual assessments.

(2) A statement of the total estimated cost of the proposed improvements.

(3) A statement that the board of supervisors proposes to issue and sell bonds to finance the cost of the proposed improvements, or the local share thereof, and to levy annual assessments on lots and parcels of property within the area of benefit which will derive special benefit therefrom to pay the principal of and interest on the bonds.

(4) The estimated maximum amount of the annual assessment to be levied on the particular parcel of property to which the notice relates, and a statement that the annual assessment to be levied on the parcel may not exceed 110 percent of that estimated maximum amount.

(5) A statement that any owner of a lot or parcel of property proposed to be assessed for the cost of the improvements or the payment of the principal of and interest on the bonds may file a written protest with the clerk.

(6) The name and telephone number of an officer or employee of the district designated by the board of supervisors to answer inquiries regarding the protest proceedings.

(c) If the engineer's report proposes the designation of two or more zones of benefit within the area of benefit wherein parcels will be assessed different amounts of annual assessments, the notice shall also advise each owner of this and of the zone in which his or her lot or parcel will be located.

SEC. 8. Section 26.4 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 26.4. Any owner of a lot or parcel of property proposed to be assessed annual assessments for the payment of the principal of and interest on the bonds may protest the proposed improvements, the extent of the area of benefit or any proposed zone of benefit, or the estimated amount of annual assessment against his or her lot or parcel by filing a written protest with the clerk at or before the time set for the hearing. Each protest shall contain a description of the lot or parcel in which each signer thereof has an ownership interest sufficient to identify that ownership interest and, if the signers are not shown on the last equalized assessment roll as the owners of the lot or parcel, the protest shall contain or be accompanied by written evidence that the signers are the owners of the property. The clerk shall endorse on each protest the date of its receipt, and at the time appointed for the hearing shall present to the board of supervisors all protests filed with the clerk.

SEC. 9. Section 26.5 is added to the Riverside County Flood

Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 26.5. At the time of the hearing, the engineer's report shall be summarized and the board of supervisors shall afford all persons who are present an opportunity to comment upon, object to, or present evidence with regard to, the proposed improvements, the proposed area of benefit and zones of benefit, the issuance and sale of the bonds, the estimated maximum amount of annual assessment against any lot or parcel of property, or any other matter relating thereto. At the conclusion of the hearing, the board of supervisors may confirm the report of the engineer or direct its modification in any respect and thereafter confirm the report as modified. The board may change the boundaries of the area of benefit or any zone of benefit identified in the report to exclude lots and parcels of property which it determines will not derive special benefit from the proposed improvements, but may not change the boundaries of the area of benefit or any zone of benefit therein to include lots and parcels which are not listed in the report. The hearing may be continued from time to time not exceeding a total of 180 days.

SEC. 10. Section 26.6 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 26.6. (a) If the board of supervisors finds that written protests filed at or before the time of the hearing are signed by the owners of more than 25 percent of the area of land in the area of benefit or in any proposed zone of benefit therein, and protests are not withdrawn at the time of the hearing so as to reduce the percentage of protests for all proposed zones of benefits below that percentage, the board shall either abandon the proceedings or by duly adopted resolution submit the propositions of the issuance of the bonds and the levy of the assessment to the voters within each zone of benefit from which the protest was received and not so reduced, and shall not proceed further with the proceedings as to any zone of benefit unless a majority of the combined votes cast at the election in all zones of benefit wherein it is held are in favor of the issuance of bonds and the levy of assessments. The board of supervisors may elect to submit the question of the issuance of the bonds and the levy of assessments to the voters in all zones of benefit.

(b) The election may be called on any of the election dates prescribed by Section 2500 of the Elections Code, and the propositions regarding the issuance of the bonds and the levy of annual assessments for the payment of the principal of, and interest on, the bonds shall be combined in a single ballot measure. The election shall be conducted as nearly as practicable in conformity with the general election law of the state. The election may be consolidated with any other elections which will be conducted on the same date within the zone or zones of benefit where the election will be held. The board of supervisors may form election precincts by adopting the precincts established for general elections or by

consolidating precincts within the zone or zones of benefit where the election is to be held, and shall appoint only one inspector, two judges, and one clerk for each precinct. The district shall pay the county for costs incurred by the county in conducting the election.

SEC. 11. Section 26.7 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 26.7. If the board of supervisors abandons the proceedings rather than call an election, or if an election is held and the required approving vote is not received, it shall not initiate similar proceedings within a period of 180 days from the date of adoption of the resolution ordering abandonment of the proceedings or the date of the election.

SEC. 12. Section 26.8 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 26.8. If, at the conclusion of the hearing, the board of supervisors determines that protests received for the area of benefit and for each of the proposed zones of benefit therein are below the percentage set forth in Section 26.6, or if the propositions regarding issuance of the bonds and the levy of annual assessments are submitted to election in any zone of benefit, and the combined votes cast in all zones of benefit wherein the election is held are in favor of the propositions, the board may adopt a resolution confirming the engineer's report, and ordering the improvements, or payment of the local share of the cost thereof, if the improvements are to be undertaken by the federal government or the state, or both, and the issuance of the bonds. The board shall by this resolution also establish the boundaries of the area of benefit and all zones of benefit therein by reference to the map or maps contained in the confirmed engineer's report.

SEC. 12.5. Section 26.9 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 26.9. The board of supervisors may authorize the issuance of bonds on the basis of competitive bids or negotiated sale. If the bonds are to be sold on the basis of a negotiated sale, the board of supervisors shall establish a process of selecting underwriters including at least five proposing underwriter firms, unless the board finds, four-fifths of its members concurring, that fewer than five underwriting firms are willing to submit proposals. If competitive bids are to be received, notice of the time and place of the receipt of bids shall be published in a financial journal of general circulation in the state as provided in Section 6066 of the Government Code. The bonds shall be issued and sold as provided in and be subject to the applicable provisions of Sections 20 and 21.

SEC. 13. Section 26.10 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945) to read:

Sec. 26.10. After the authorization and sale of bonds pursuant to Sections 26.1 to 26.9, inclusive, the board of supervisors shall levy assessments each year upon the lots and parcels of property identified and listed in the engineer's report based upon the special benefit to be derived thereby from the improvements as specified therein in a total amount sufficient to pay interest on the bonds for that year and that portion of the principal thereof as is to become due during the time before the next general tax levy. The board may also include in the total amount of the assessment levied in any year the estimated amount of the district's cost of levying and collecting the assessments, the cost of registration, transfer and payment of the bonds, the expected amount of delinquency in payment of assessments, and the amount, if any, needed to replenish the reserve fund for the bonds as a result of past delinquencies in payment of assessments. However, the amount of the annual assessment on any lot or parcel in any year shall not exceed 110 percent of the estimated amount of the maximum annual assessment set forth in the engineer's report for the lot or parcel. The annual assessments shall be levied, collected, and become delinquent at the same time and in the same manner and have the same lien priority and bear the same penalites and interest after delinquency as the general tax levy for county purposes. When collected, the assessments shall be paid into the county treasury of the County of Riverside to the credit of the district, and be used for the payment of the principal of and interest on the bonds, the replenishment of the reserve fund for the bonds, the district's expenses incurred in levying and collecting the assessments, and the cost of registration, transfer, and payment of the bonds, and for no other purpose. The principal of and interest on the bonds shall be paid by the county treasurer of the county in the manner provided by law for the payment of the principal of and interest on bonds of the county, except that the board of supervisors may determine in the resolution authorizing the issuance of the bonds that the principal and interest shall be paid by a paying agent, other than the county treasurer, named therein.

SEC. 14. Section 26.11 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 26.11. The board of supervisors may include in the aggregate principal amount of the bonds an amount for a reserve fund for the payment of the principal of and interest on the bonds in the event that as a result of delinquencies in the payment of annual assessments levied on benefiting lots and parcels there is a deficiency in the amount needed for the payment of principal and interest. The amount to be included for the reserve fund shall not exceed 10 percent of the total principal amount of the bonds. The reserve fund and all interest earned thereon shall be used solely for the payment of the principal of and interest on the bonds, if there is a deficiency, and then only to the extent of the deficiency. Notwithstanding any other provision of this section, for the purpose of assuring that the

bonds will not become arbitrage bonds as defined in the Internal Revenue Code of 1986 (26 U.S.C. Sec. 62 et seq.) and regulations promulgated thereunder by the United States Department of the Treasury, and providing for a reduction of the amount of money in the reserve fund during the term of the bonds, the board of supervisors may, by resolution adopted prior to the issuance of the bonds, provide that money in the reserve fund, including investment income, shall be transferred to the redemption fund for the bonds for advance retirement of the bonds. The balance remaining in the reserve fund at the time of the levy of the annual assessments for the payment of the principal of and interest on the last series of the bonds shall be transferred to the redemption fund and taken into consideration by the board of supervisors in determining the aggregate amount of the annual assessments to be levied for the payment of the principal and interest. In lieu of establishing a reserve fund or in addition thereto, the board of supervisors may, in determining the amount of the assessments to be levied on lots and parcels benefiting from the improvements in any year, include in the assessments a proportionate share of any expected amount of delinquency in payment of assessments, or a proportionate share of the amount needed to replenish the reserve fund as a result of past delinquencies in the payment of assessments.

Notwithstanding the preceding provisions of this section, if any amendment to the Internal Revenue Code of 1986, (26 U.S.C. Sec. 62 et seq.) or the regulations of the United States Department of the Treasury thereunder require a different allocation or utilization of the amount of the reserve fund or the earnings thereon than is herein provided, the board of supervisors shall order that action with regard to the reserve fund or the earnings thereon as is required to avoid the interest on the bonds becoming taxable.

SEC. 14.5. Section 26.12 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 26.12. The validity of any proceedings for the issuance of bonds conducted pursuant to Sections 26.1 to 26.11, inclusive, shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the adoption by the board of supervisors of a resolution or resolutions confirming, or modifying and confirming as modified, the engineer's report and authorizing the issuance of bonds. An appeal from a final judgment in such an action or proceeding shall be perfected within 30 days after the entry of judgment. Bonds issued pursuant to Sections 26.1 to 26.11, inclusive, shall be conclusive evidence of the regularity of all proceedings leading up to the issuance of the bonds.

SEC. 15. Section 26.13 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 26.13. An action to determine the validity of the bonds issued pursuant to Sections 26.1 to 26.11, inclusive, and of the annual

assessments to be levied on lots and parcels which will derive special benefit from the improvements to be financed therewith to pay the principal of and interest on the bonds, or to determine the validity of assessments levied pursuant to Section 14, shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

SEC. 16. Section 26.14 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 26.14. The board of supervisors shall, upon confirming the engineer's report and establishing the boundaries of the area of benefit pursuant to Section 14 or Section 26.8, record with the County Recorder of the County of Riverside a notice of the establishment of the area of benefit. The notice shall be captioned "Notice of Establishment of Area of Benefit for the _____ Project of the Riverside County Flood Control and Water Conservation District," and shall provide notice of the boundaries of the territory included in the area of benefit by reference to sections, townships and ranges of the United States Government Survey of public lands, or a map or maps showing the boundaries which may be recorded with the notice. The notice shall further provide notice that all lots and parcels of land in the area of benefit are subject to the annual levy of assessments for the payment of the cost of the construction, maintenance, operation, extension, and repair of any works or improvements or the payment of principal and interest on bonds of the district sold to finance the improvements, or the local share of the cost thereof, and that the amount of annual assessment for any lot or parcel therein may be obtained from the chief engineer of the district. If the board determines to provide notice of the boundaries of the territory included in the area of benefit by reference to the sections, townships, and ranges of the United States Government Survey, it need not specifically identify the boundaries, but shall by that reference generally identify the territory included therein. The notice shall be signed on behalf of the district by the chairman of the board or the chief engineer. The recording of the notice shall impart constructive notice of its contents to purchasers and mortgagees of property in the area of benefit.

SEC. 17. Section 26.15 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 26.15. The Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800) of the Streets and Highways Code) does not apply to assessments levied pursuant to Section 14 or Sections 26.1 to 26.10, inclusive.

SEC. 18. Section 26.16 is added to the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to read:

Sec. 26.16. The procedures set forth in Sections 26.1 to 26.11,

inclusive, for the levy of assessments and the issuance of bonds are alternative to other bonding and assessment procedures contained in this act.

SEC. 19. Section 27 of the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945) is amended to read:

Sec. 27. The bonds of the district issued for any zone or improvement district 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 be invested in bonds of cities, cities and counties, counties, school districts or other municipal or public corporations, the money or funds may be invested in the bonds of the district issued in accordance with this act, and whenever bonds of cities, cities and counties, counties, school districts or other municipal or public corporations, may by law be used as security for the performance of any act, the bonds of the district may be so used.

CHAPTER 670

An act to amend Section 68547 of the Government Code, relating to courts.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987]

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

SECTION 1. Section 68547 of the Government Code is amended to read:

68547. For the purposes of this article, a judge or justice is deemed to serve or sit under assignment on each day during which it is necessary for him or her on account of the assignment to serve on the court to which assigned, to travel to or from such court, or to be absent from his or her residence. If a judge so serves under assignment in one or more courts during all days other than Saturdays, Sundays, and holidays in any period of 30 or more consecutive days (inclusive of Saturdays, Sundays, and holidays), he or she shall be deemed also to have served or sat in such court or courts on all Saturdays, Sundays, and holidays during or immediately preceding that period.

If a judge who serves his or her court on a part-time basis has completed the business of the home court for all days affected by any assignment, compensation attributable to the home court shall only be deducted from the amounts to be paid pursuant to Section 68540.7 for the days the judge is serving on assignment to the extent necessary to limit the assigned judge's total judicial compensation for

the month to the amount earned by a regular judge of the court to which the judge is assigned.

SEC. 2. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 671

An act to amend Section 6738 of, to repeal Sections 6738.1 and 6738.2 of, and to repeal and add Section 8729 of, the Business and Professions Code, relating to consumer affairs.

[Approved by Governor September 14, 1987. Filed with Secretary of State September 15, 1987]

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

SECTION 1. Section 6738 of the Business and Professions Code is amended to read:

6738. (a) This chapter does not prohibit one or more civil, electrical, or mechanical engineers from practicing or offering to practice within the scope of their registration, civil, electrical, or mechanical engineering as a sole proprietorship, partnership, firm, or corporation, (hereinafter called business), if all of the following requirements are met:

(1) A civil, electrical, or mechanical engineer currently registered in this state is an owner, part owner, or officer in charge of the engineering practice of the business.

(2) All engineering plans, specifications, reports, and documents are prepared under the responsible charge of a registered engineer in the appropriate branch of professional engineering.

(3) The business name of a California business shall only contain the name of any person who is registered by the board in a branch of professional engineering, a licensed land surveyor, a licensed architect, or a geologist registered under the Geologist Act (Chapter 12.5 (commencing with Section 7800)). Any offer, promotion, or advertisement by the business which contains the name of any individual in the business, other than by use of the name of an individual in the business name, shall clearly and specifically designate the license or registration discipline of each individual named. An out-of-state business with a branch office in this state shall have a part owner or officer who is in charge of the engineering work in the branch in this state, who is registered in this state, and who is physically present at the branch office in this state on a regular basis.

However, the name of the business may contain the name of any person not registered in this state if that person is appropriately registered in another state. Any offer, promotion, or advertisement which contains the name of any individual in the business, other than by use of the names of the individuals in the business name, shall clearly and specifically designate the license or registration discipline of each individual named.

(b) A fictitious name may be used for an engineering business if (1) the name does not conflict with paragraph (3) of subdivision (a) requiring that names used in the business name shall be appropriately registered individuals, and (2) an organization record form is filed with the board.

(c) A nonregistered person may also be a part owner or an officer of a civil, electrical, or mechanical engineering business if the requirements of subdivision (a) are met.

(d) This chapter does not prevent an individual or business engaged in any line of endeavor other than the practice of civil, electrical, or mechanical engineering from employing or contracting with a registered civil, electrical, or mechanical engineer to perform the respective engineering services incidental to the conduct of business.

(e) This section shall not prevent the use of the name of any business engaged in rendering civil, electrical, or mechnical engineering services, including the use by any lawful successor or survivor, which lawfully was in existence on December 31, 1987. However, the business is subject to paragraphs (1) and (2) of subdivision (a), and the business shall file an organization record form with the board as designated by board rule.

(f) A business engaged in rendering civil, electrical, or mechanical engineering services may use in its name the name of a deceased or retired person provided all of the following conditions are satisfied:

(1) The person's name had been used in the name of the business, or a predecessor in interest of the business, prior to and after the death or retirement of the person.

(2) The person shall have been an owner, part owner, or officer of the business, or an owner, part owner, or officer of the predecessor in interest of the business.

(3) The person shall have been licensed as a professional engineer, or a land surveyor, or an architect, or a geologist, (A) by the appropriate licensing board if that person is operating a place of business or practice in this state, or (B) by the applicable state board in the event no place of business existed in this state.

(4) The person, if retired, has consented to the use of the name and does not permit the use of the name in the title of another professional engineering business in this state during the period of the consent. However, the retired person may use his or her name as the name of a new or purchased business if it is not identical in every respect to that person's name as used in the former business.

(5) The business shall be subject to the provisions of paragraphs (1) and (2) of subdivision (a).

(6) The business files a current organization record form with the board.

(g) This section does not affect the provisions of Sections 6731.2 and 8726.1.

SEC. 2. Section 6738.1 of the Business and Professions Code is repealed.

SEC. 3. Section 6738.2 of the Business and Professions Code is repealed.

SEC. 4. Section 8729 of the Business and Professions Code is repealed.

SEC. 5. Section 8729 is added to the Business and Professions Code, to read:

8729. (a) This chapter does not prohibit one or more licensed land surveyors or civil engineers registered in this state prior to 1982 (hereinafter called civil engineers) from practicing or offering to practice within the scope of their licensure, land surveying as a sole proprietorship, partnership, firm, or corporation (hereinafter called business) if the following conditions are satisfied:

(1) A land surveyor or civil engineer currently licensed in the state is an owner, part owner, or officer in charge of the land surveying practice of the business.

(2) All maps, plats, reports, descriptions, or other documents are prepared under the responsible charge of a land surveyor or civil engineer.

(3) The business name of a California business shall only contain the name of a person licensed by the board as a land surveyor or registered by the board in any year as a civil engineer. Any offer, promotion, or advertisement by the business which contains the name of any individual in the business, other than by use of the name of the individual in the business name, shall clearly and specifically designate the license or registration discipline of each individual named. An out-of-state business with a branch office in this state shall have a part owner or officer who is in charge of the land surveying work in this state, who is licensed in this state, and who is physically present at the branch office in this state on a regular basis. However, the name of the business may contain the name of a person not licensed in this state, if that person is appropriately licensed in another state. Any offer, promotion, or advertisement which contains the name of any individual in the business, other than by use of the name of the individual in the business name, shall clearly and specifically designate the license or registration discipline of each individual named.

(b) A fictitious name may be used for a land surveying business if (1) the name does not conflict with the provisions of paragraph (3) of subdivision (a) requiring that a name used in the business name shall be that of an appropriately licensed individual, and (2) an organization record is filed with the board.

(c) A nonregistered person may also be a part owner or an officer of a land surveying business if the conditions of subdivision (a) are satisfied.

(d) This chapter does not prevent an individual or business engaged in any line of endeavor, other than the practice of land surveying, from employing or contracting with a licensed land surveyor or a registered civil engineer to perform the respective land surveying services incidental to the conduct of business.

(e) This section shall not prevent the use of the name of any business engaged in rendering land surveying services, including the use by any lawful successor or survivor, which lawfully was in existence on June 1, 1941. However, the business is subject to the provisions of paragraphs (1) and (2) of subdivision (a) and the business shall file an organization record form with the board as designated by board rule.

(f) A business engaged in rendering land surveying services may use in its name the name of a deceased or retired person if the following conditions are satisfied:

(1) The person's name had been used in the name of the business, or a predecessor in interest of the business, prior to the death or retirement of the person.

(2) The person shall have been an owner, part owner, or officer of the business, or an owner, part owner, or officer of the predecessor in interest of the business.

(3) The person shall have been licensed as a land surveyor or a civil engineer by the board, if operating a place of business or practice in this state, or by an applicable state board in the event no place of business existed in this state.

(4) The person, if retired, has consented to the use of the name and does not permit the use of the name in the title of another land surveying business in this state during the period of that consent, except that a retired person may use his or her name as the name of a new or purchased business, if that business is not identical in every respect to that person's name as used in the former business.

(5) The business shall be subject to paragraphs (1) and (2) of subdivision (a).

(6) The business files a current organization record form with the board.

(g) This section does not affect Sections 6731.2 and 8726.1.

CHAPTER 672

An act to amend Sections 13142.4 and 13144.5 of the Health and Safety Code, relating to fire service training, and making an appropriation therefor.

[Approved by Governor September 14, 1987 Filed with Secretary of State September 15, 1987]

I am deleting the $30,000 appropriation contained in Section 2 of AB 216.

This bill would prohibit the State Fire Marshal from establishing or collecting a minimum fee for providing training to local fire services pertaining to the enforcement of state fire and life safety laws and regulations.

The California Fire Services Training and Education Fund has a sufficient surplus this year to fund this program. I request that the Department of Finance and the State Fire Marshal work out the details of utilizing this fund to accomplish the goals of this legislation

With this deletion, I approve Assembly Bill No 216.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 13142.4 of the Health and Safety Code is amended to read:

13142.4. The State Fire Marshal, with policy guidance and advice from the State Board of Fire Services, shall:

(a) Establish and validate recommended minimum standards for fire protection personnel and fire protection instructors at all career levels.

(b) Develop course curricula for arson, fire technology, and apprenticeship training for use in academies, colleges, and other educational institutions.

(c) Develop, validate, update, copyright, and maintain security over a complete series of promotional examinations based on the minimum standards established pursuant to subdivision (a).

(d) Have the authority to make the examinations developed pursuant to subdivision (c) available to any agency of the state, to any political subdivision within the state, or to any other testing organization, as he or she deems appropriate.

(e) Promote participation in, sponsor, and administer the California Firefighter Joint Apprenticeship Program as the preemployment recruitment, selection, and training system to be utilized for entry level firefighters.

(f) Establish advisory committees or panels, as necessary, to assist the State Fire Marshal in carrying out his or her functions under this section.

(g) Establish any fees which are necessary to implement this section. However, the State Fire Marshal shall not establish or collect any fees for training classes provided by the State Fire Marshal to fire protection personnel relating to state laws and regulations which local fire services are authorized or required to enforce.

(h) Promote, sponsor, and administer the California Fire

Academy System.

(i) Establish procedures for seeking, accepting, and administering gifts and grants for use in implementing the intents and purposes of the California Fire and Arson Training Act.

(j) This section shall be known, and may be cited, as the California Fire and Arson Training Act.

(k) The recommended minimum standards established pursuant to subdivision (a) shall not apply to any agency of the state or any agency of any political subdivision within the state unless that agency elects to be subject to these standards.

SEC. 1.5. Section 13142.4 of the Health and Safety Code is amended to read:

13142.4. The State Fire Marshal, with policy guidance and advice from the State Board of Fire Services, shall:

(a) Establish and validate recommended minimum standards for fire protection personnel and fire protection instructors at all career levels.

(b) Develop course curricula for arson, fire technology, and apprenticeship training for use in academies, colleges, and other educational institutions.

(c) Develop, validate, update, copyright, and maintain security over a complete series of promotional examinations based on the minimum standards established pursuant to subdivision (a).

(d) Have the authority to make the examinations developed pursuant to subdivision (c) available to any agency of the state, to any political subdivision within the state, or to any other testing organization, as he or she deems appropriate.

(e) Jointly, with the California Professional Firefighters, promote participation in, sponsor, and administer the California Firefighter Joint Apprenticeship Program as the preemployment recruitment, selection, and training system to be utilized for entry level firefighters.

(f) Establish advisory committees or panels, as necessary, to assist the State Fire Marshal in carrying out his or her functions under this section.

(g) Establish any fees which are necessary to implement this section. However, the State Fire Marshal shall not establish or collect any fees for training classes provided by the State Fire Marshal to fire protection personnel relating to state laws and regulations which local fire services are authorized or required to enforce.

(h) Promote, sponsor, and administer the California Fire Academy System.

(i) Establish procedures for seeking, accepting, and administering gifts and grants for use in implementing the intents and purposes of the California Fire and Arson Training Act.

(j) This section shall be known, and may be cited, as the California Fire and Arson Training Act.

(k) The recommended minimum standards established pursuant to subdivision (a) shall not apply to any agency of the state or any

agency of any political subdivision within the state unless that agency elects to be subject to these standards.

SEC. 2. Section 13144.5 of the Health and Safety Code is amended to read:

13144.5. The State Fire Marshal shall prepare and conduct voluntary regular training sessions devoted to the interpretation and application of the laws and rules and regulations in Title 19 and Title 24 of the California Administrative Code relating to fire and panic safety. The sum of thirty thousand dollars ($30,000) is hereby appropriated annually from the General Fund to the State Fire Marshal for expenditure for the purposes of this section.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 13142.4 of the Health and Safety Code proposed by this bill, SB 531, and AB 1973. It shall only become operative if (1) this bill and either SB 531 or AB 1973 or all three bills are enacted and become effective on January 1, 1988, (2) each bill enacted amends Section 13142.4 of the Health and Safety Code, and (3) this bill is enacted after SB 531 or AB 1973, or both, in which case Section 1 of this bill shall not become operative.

CHAPTER 673

An act to amend Sections 99406 and 99408 of, and to add Sections 99238, 99238.5, 99401.5, and 99401.6 to, the Public Utilities Code, to add Section 10789 to the Revenue and Taxation Code, and to amend Section 9107 of the Vehicle Code, relating to transportation, and making an appropriation therefor.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 16, 1987]

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

SECTION 1. Section 99238 is added to the Public Utilities Code, to read:

99238. Each transportation planning agency shall provide for the establishment of a social services transportation advisory council for each county, or counties operating under a joint powers agreement, which is not subject to the apportionment restriction established in Section 99232.

(a) The social services transportation advisory council shall consist of the following members:

(1) One representative of potential transit users who is 60 years of age or older.

(2) One representative of potential transit users who is handicapped.

(3) Two representatives of the local social service providers for seniors, including one representative of a social service

transportation provider, if one exists.

(4) Two representatives of local social service providers for the handicapped, including one representative of a social service transportation provider, if one exists.

(5) One representative of a local social service provider for persons of limited means.

(6) Two representatives from the local consolidated transportation service agency, designated pursuant to subdivision (a) of Section 15975 of the Government Code, if one exists, including one representative from an operator, if one exists.

(7) The transportation planning agency may appoint additional members in accordance with the procedure prescribed in subdivision (b).

(b) Members of the social services transportation advisory council shall be appointed by the transportation planning agency which shall recruit candidates for appointment from a broad representation of social service and transit providers representing the elderly, the handicapped, and persons of limited means. In appointing council members, the transportation planning agency shall strive to attain geographic and minority representation among council members. Of the initial appointments to the council, one-third of them shall be for a one-year term, one-third shall be for a two-year term, and one-third shall be for a three-year term. Subsequent to the initial appointment, the term of appointment shall be for three years, which may be renewed for an additional three-year term. The transportation planning agency may, at its discretion, delegate its responsibilities for appointment pursuant to this subdivision to the board of supervisors.

(c) The social services transportation advisory council shall have the following responsibilities:

(1) Annually participate in the identification of transit needs in the jurisdiction, including unmet transit needs that may exist within the jurisdiction of the council and that may be reasonable to meet by establishing or contracting for new public transportation or specialized transportation services or by expanding existing services.

(2) Annually review and recommend action by the transportation planning agency for the area within the jurisdiction of the council which finds, by resolution, that (A) there are no unmet transit needs, (B) there are no unmet transit needs that are reasonable to meet, or (C) there are unmet transit needs, including needs that are reasonable to meet.

(3) Advise the transportation planning agency on any other major transit issues, including the coordination and consolidation of specialized transportation services.

(d) It is the intent of the Legislature that duplicative advisory councils shall not be established where transit advisory councils currently exist and that those existing advisory councils shall, instead, become part of the social services transportation advisory council and shall assume any new responsibilities pursuant to this section.

SEC. 2. Section 99238.5 is added to the Public Utilities Code, to

read:

99238.5. The transportation planning agency shall ensure the establishment and implementation of a citizen participation process appropriate for each county, or counties if operating under a joint powers agreement, utilizing the social services transportation advisory council as a mechanism to solicit the input of transit dependent and transit disadvantaged persons, including the elderly, handicapped, and persons of limited means. The process shall include provisions for at least one public hearing in the jurisdiction represented by the social services transportation advisory council. Notice of the hearing, including the date, place, and specific purpose of the hearing shall be given at least 30 days in advance through publication in a newspaper of general circulation. The transportation planning agency shall also send written notification to those persons and organizations which have indicated, through its citizen participation or any other source of information, an interest in the subject of the hearing.

SEC. 3. Section 99401.5 is added to the Public Utilities Code, to read:

99401.5. Prior to making any allocation not directly related to public transportation services, specialized transportation services, or facilities provided for the exclusive use of pedestrians and bicycles, the transportation planning agency shall annually do all of the following:

(a) Establish a social services transportation advisory council pursuant to Section 99238.

(b) Identify the transit needs of the jurisdiction which have been considered as part of the transportation planning process, including the following:

(1) An annual assessment of the size and location of identifiable groups likely to be transit dependent or transit disadvantaged, including, but not limited to, the elderly, the handicapped, and persons of limited means.

(2) An analysis of the adequacy of existing public transportation services and specialized transportation services, including privately and publicly provided services, in meeting the transit demand identified pursuant to paragraph (1).

(3) An analysis of the potential alternative public transportation and specialized transportation services and service improvements that would meet all or part of the transit demand.

(c) Identify the unmet transit needs of the jurisdiction and those needs that are reasonable to meet. The transportation planning agency shall hold at least one public hearing pursuant to Section 99238.5 for the purpose of soliciting comments on the unmet transit needs that may exist within the jurisdiction and that might be reasonable to meet by establishing or contracting for new public transportation or specialized transportation services or by expanding existing services. The definition adopted by the transportation planning agency for the terms "unmet transit needs" and

"reasonable to meet" shall be documented by resolution or in the minutes of the agency. The fact that an identified transit need cannot fully be met based on available resources shall not be the sole reason for finding that a transit need is not reasonable to meet. An agency's determination of needs that are reasonable to meet shall not be made by comparing unmet transit needs with the need for streets and roads.

(d) Adopt by resolution a finding for the jurisdiction, after consideration of all available information compiled pursuant to subdivisions (a), (b), and (c). The finding shall be that (1) there are no unmet transit needs, (2) there are no unmet transit needs that are reasonable to meet, or (3) there are unmet transit needs, including needs that are reasonable to meet. The resolution shall include information developed pursuant to subdivisions (a), (b), and (c) which provides the basis for the finding.

(e) If the transportation planning agency adopts a finding that there are unmet transit needs, including needs that are reasonable to meet, then the unmet transit needs shall be funded before any allocation is made for streets and roads within the jurisdiction. If the finding is inconsistent with the regional transportation plan, then the transportation planning agency shall resolve the inconsistency by timely amendment or supplement to the plan.

SEC. 4. Section 99401.6 is added to the Public Utilities Code, to read:

99401.6. Upon adoption of a finding, pursuant to subdivision (d) of Section 99401.5 that there are no unmet transit needs or that there are no unmet transit needs that are reasonable to meet, the transportation planning agency may allocate funds for local streets and roads. The allocation shall not become effective until 20 days after acknowledgment of receipt by the Department of Transportation of documents of the agency's finding. The transportation planning agency shall, in any case, submit the documentation before August 15 of the fiscal year of the allocation or within 10 days after the adoption of the finding, whichever is later. The documentation shall include all of the following:

(a) A copy of the notice of hearing and proof of publication and a description of the actions taken to solicit citizen participation pursuant to Section 99238.5.

(b) A copy of the resolution or minutes documenting the transportation planning agency's definitions of "unmet transit needs" and "reasonable to meet," as determined pursuant to subdivision (c) of Section 99401.5.

(c) A copy of the resolution adopting the unmet needs finding described in subdivision (d) of Section 99401.5.

SEC. 5. Section 99406 of the Public Utilities Code is amended to read:

99406. Expenditures of moneys received for streets and highways purposes under this article shall be reported to the Controller by way of inclusion of information regarding those expenditures in the

report prepared pursuant to Chapter 4 (commencing with Section 2150) of Division 3 of the Streets and Highways Code.

The Controller shall also prepare a summary of those expenditures, which shall include a list of the jurisdictions for which funds have been allocated for streets and roads under this article, the amount of the allocations, and the total funds made available to each jurisdiction pursuant to Article 3 (commencing with Section 99230). The Controller shall submit the report annually to the Legislature commencing January 1, 1989.

SEC. 4. Section 99408 of the Public Utilities Code is amended to read:

99408. Any action to review, set aside, void, or annul the decision of a transportation planning agency made pursuant to Section 99401.5 shall be filed within 30 days after the agency makes its decision, or after the secretary has reviewed the decision pursuant to Section 99242, whichever is later. However, the action need not be filed until September 15 if the action is with respect to a decision made prior to August 15 for the fiscal year which commenced on the July 1 immediately preceding such August 15.

SEC. 7. Section 10789 is added to the Revenue and Taxation Code, to read:

10789. The license fee imposed by this part does not apply to any vehicle purchased with federal funds under the authority of paragraph (2) of subsection (b) of Section 1612 of Title 49 of the United States Code or Chapter 35 (commencing with Section 3000) of Title 42 of the United States Code for the purpose of providing specialized transportation services to senior citizens and handicapped persons by public and private nonprofit operators of specialized transportation services, including a consolidated transportation service agency designated pursuant to Section 15975 of the Government Code.

SEC. 8. Section 9107 of the Vehicle Code is amended to read:

9107. The weight fees for commercial vehicles specified in Section 9400 do not apply to any of the following:

(a) Any vehicle operated by a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, which is subject to the jurisdiction of the Public Utilities Commission, if both of the following conditions are met:

(1) When the vehicle is operated exclusively on any line or lines having a one-way route mileage not exceeding 15 miles, and if each such line is operated in either of the following areas:

(A) In urban or suburban areas or between cities in close proximity.

(B) Between nonadjacent urban or suburban areas or cities, the area between which is substantially residential, commercial, or industrial as distinguished from rural.

(2) When the principal business of the passenger stage corporation is the operation of vehicles on a route or routes as defined in paragraph (1) of this subdivision.

(b) Any vehicle operated exclusively on any line or lines within the limits of a single city by a person engaged as a common carrier of passengers 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 state corporation subject to the jurisdiction of the Public Utilities Commission.

(c) Vanpool vehicles.

(d) Any vehicle purchased with federal funds under the authority of paragraph (2) of subsection (b) of Section 1612 of Title 49 of the United States Code or Chapter 35 (commencing with Section 3001) of Title 42 of the United States Code for the purpose of providing specialized transportation services to senior citizens and handicapped persons by public and private nonprofit operators of specialized transportation service agencies.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

SEC. 10. The sum of thirty-eight thousand seven hundred seventy dollars ($38,770) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Department of Motor Vehicles for the purposes of implementing this act.

CHAPTER 674

An act to amend Section 10263 of the Public Contract Code, relating to public contracts.

[Approved by Governor September 16, 1987 Filed with Secretary of State September 16, 1987]

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

SECTION 1. Section 10263 of the Public Contract Code is amended to read:

10263. (a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the State Treasurer or a state or federally chartered bank in California as the escrow agent, who shall then pay the moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

(b) Alternatively, the contractor may request and the owner shall

make payment of retentions earned directly to the escrow agent. The contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section.

(c) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency.

The contractor shall be beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Failure to include the provisions prescribed by this section in bid and contract documents shall void any provisions for performance retentions in a public agency contract.

(d) The Legislature hereby finds and declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors in public contract procedures.

(e) The escrow agreement used pursuant to this section shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between _____
_____
_____ whose address is _____
_____ hereinafter called "owner,"
_____ whose address is_____
_____ hereinafter called "contractor,"
and
_____ whose address is_____
_____ hereinafter called "escrow agent."

For the consideration hereinafter set forth, the owner, contractor, and escrow agent agree as follows:

(1) Pursuant to Section 10263 of the Public Contract Code of the State of California, the contractor has the option to deposit securities with the escrow agent as a substitute for retention earnings required to be withheld by the owner pursuant to the construction contract entered into between the owner and contractor for _____ in the amount of _____ dated _____ (hereafter referred

to as the "contract"). Alternatively, on written request of the contractor, the owner shall make payments of the retention earnings directly to the escrow agent. When the contractor deposits the securities as a substitute for the contract earnings, the escrow agent shall notify the owner within ten days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the contract between the owner and contractor. Securities shall be held in the name of the _____, and shall designate the contractor as the beneficial owner.

(2) The owner shall make progress payments to the contractor for those funds which otherwise would be withheld from progress payments pursuant to the contract provision, provided that the escrow agent holds securities in the form and amount specified above.

(3) When the owner makes payment of retentions earned directly to the escrow agent, the escrow agent shall hold them for the benefit of the contractor until such time as the escrow created under this contract is terminated. The contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the owner pays the escrow agent directly.

(4) The contractor shall be responsible for paying all fees for the expenses incurred by the escrow agent in administering the escrow account. These expenses and payment terms shall be determined by the contractor and escrow agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on the interest shall be for the sole account of contractor and shall be subject to withdrawal by contractor at any time and from time to time without notice to the owner.

(6) The contractor shall have the right to withdraw all or any part of the principal in the escrow account only by written notice to the escrow agent accompanied by written authorization from the owner to the escrow agent that the owner consents to the withdrawal of the amount sought to be withdrawn by contractor.

(7) The owner shall have a right to draw upon the securities in the event of default by the contractor. Upon seven days' written notice to the escrow agent from the owner of the default, the escrow agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the owner.

(8) Upon receipt of written notification from the owner certifying that the contract is final and complete, and that the contractor has complied with all requirements and procedures applicable to the contract, the escrow agent shall release to the contractor all securities and interest on deposit less escrow fees and charges of the escrow account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments

of fees and charges.

(9) The escrow agent shall rely on the written notifications from the owner and the contractor pursuant to Sections (1) to (8), inclusive, of this agreement and the owner and contractor shall hold the escrow agent harmless from the escrow agent's release, conversion, and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the owner and on behalf of the contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of the owner:	On behalf of the contractor:
Title	Title
Name	Name
Signature	Signature
Address	Address

On behalf of the escrow agent:

Title

Name

Signature

Address

At the time the escrow account is opened, the owner and contractor shall deliver to the escrow agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner	Contractor
Title	Title
Name	Name
Signature	Signature

CHAPTER 675

An act to amend Section 4063 of the Business and Professions Code, relating to pharmacy, and making an appropriation therefor.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 16, 1987]

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

SECTION 1. Section 4063 of the Business and Professions Code is amended to read:

4063. Notwithstanding anything contained in this chapter, a licensed nonprofit community clinic or free clinic as defined in paragraphs (1) and (2) of subdivision (a) of Section 1204 of the Health and Safety Code or a nonprofit multispecialty clinic, as referred to in subdivision (*l*) of Section 1206 of the Health and Safety Code, may purchase drugs at wholesale for administration or dispensing, under the direction of a physician, to patients registered for care at the clinic. The clinic shall keep records of the kind and amounts of drugs purchased, administered, and dispensed, and the records shall be available and maintained for a minimum of seven years for inspection by all properly authorized personnel.

CHAPTER 676

An act to add Section 58801.5 to the Education Code, relating to education.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 16, 1987.]

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

SECTION 1. Section 58801.5 is added to the Education Code, to read:

58801.5. Entities eligible for funding of startup costs pursuant to Section 58801 shall be eligible to compete for funding for startup costs regardless of funding in any prior year. Receipt of funds for additional startup costs shall be based upon the addition of new program offerings. Funds provided pursuant to this section shall supplement, and shall not supplant, funds provided pursuant to Section 58801.

CHAPTER 677

An act to amend Sections 1432 and 1543 of the Civil Code, and to amend Sections 877 and 877.6 of the Code of Civil Procedure, relating to settlements.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 16, 1987]

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

SECTION 1. Section 1432 of the Civil Code is amended to read:

1432. Except as provided in Section 877 of the Code of Civil Procedure, a party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him.

SEC. 1.5. Section 1543 of the Civil Code is amended to read:

1543. A release of one of two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him or her, except as provided in Section 877 of the Code of Civil Procedure.

SEC. 2. Section 877 of the Code of Civil Procedure is amended to read:

877. Where a release, dismissal with or without prejudice, or a convenant not to sue or not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort, or to one or more other co-obligors mutually subject to contribution rights, it shall have the following effect:

(a) It shall not discharge any other such party from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it whichever is the greater.

(b) It shall discharge the party to whom it is given from all liability for any contribution to any other parties.

(c) This section shall not apply to co-obligors who have expressly agreed in writing to an apportionment of liability for losses or claims among themselves.

(d) This section shall not apply to a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment given to a co-obligor on an alleged contract debt where the contract was made prior to January 1, 1988.

SEC. 3. Section 877.6 of the Code of Civil Procedure is amended to read:

877.6. (a) Any party to an action wherein it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or

more alleged tortfeasors or co-obligors, upon giving notice thereof in the manner provided in Sections 1010 and 1011 at least 20 days before the hearing. In addition, the notice may be served by mail pursuant to Section 1012, but in those cases the period of notice shall be at least 25 days if the place of address is within the State of California, at least 30 days if the place of address is outside the State of California but within the United States, and at least 40 days if the place of address is outside the United States. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

(b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response thereto, or the court may, in its discretion, receive other evidence at the hearing.

(c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

(d) The party asserting the lack of good faith shall have the burden of proof on that issue.

(e) When a determination of the good faith or lack of good faith of a settlement is made, any party aggrieved by the determination may petition the proper court to review the determination by writ of mandate. The petition for writ of mandate shall be filed within 20 days after service of written notice of the determination, or within such additional time not exceeding 20 days as the trial court may allow.

(1) The court shall, within 30 days of the receipt of all materials to be filed by the parties, determine whether or not the court will hear the writ and notify the parties of its determination.

(2) If the court grants a hearing on the writ, the hearing shall be given special precedence over all other civil matters on the calendar of the court except those matters to which equal or greater precedence on the calendar is granted by law.

The running of any period of time after which an action would be subject to dismissal pursuant to Section 583 shall be tolled during the period of review of a determination pursuant to this subdivision.

CHAPTER 678

An act to amend Sections 69810, 69811, and 69812 of the Education Code, relating to student financial aid.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 16, 1987.]

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

SECTION 1. Section 69810 of the Education Code is amended to read:

69810. In accepting a scholarship, loan, fellowship, grant-in-aid, or any other financial aid given or guaranteed by the state for assistance, every recipient thereof who is a student at a public or private university, college, or other institution of higher education, shall be deemed to have agreed to observe the rules and regulations promulgated by the governing authority of the university, college, or other institution of higher education, for the government thereof.

Any recipient of this state financial aid who, on the campus of the university, college, or other institution of higher education, willfully and knowingly commits any act likely to disrupt the peaceful conduct of the activities of the campus, and is arrested and convicted of a public offense arising from the act, may be determined to be ineligible for any state financial aid for a period not to exceed the ensuing two academic years.

Any recipient of this state financial aid who, after a hearing, is found to have willfully and knowingly disrupted the orderly operation of the campus, but has not been arrested and convicted, may be determined to be ineligible for any state financial aid for the period as the hearing board may determine, not to exceed the ensuing two academic years.

Any recipient who is suspended from an institution of higher education for these acts shall be ineligible for state financial aid for a period not less than the time of the suspension.

The governing authority of the university, college, or other institution of higher education shall, for purposes of this section, cause to be reviewed the record of each recipient and shall, as soon as practicable, notify a hearing board established by it of the name of any recipient who committed any act likely to disrupt the peaceful conduct of the activities of the campus and was arrested and convicted of any public offense arising from that act, or is found to have willfully and knowingly disrupted the orderly operation of the campus, or has been suspended from an institution of higher education for these acts.

SEC. 2. Section 69811 of the Education Code is amended to read:

69811. Upon receipt of notice, as provided in Section 69810 that any recipient has committed any act likely to disrupt the peaceful conduct of the activities of the campus and was convicted of a public

offense in connection therewith, or is found to have willfully and knowingly disrupted the orderly operation of the campus, or has been suspended from an institution of higher education for these acts, the hearing board shall immediately give the recipient written notice of the report. The notice shall inform the recipient of the pendency of the proceedings for the suspension of assistance. It shall inform the recipient that he may present evidence of mitigating circumstances to the hearing board within 14 calendar days of the date of the mailing of the notice, and shall specify the procedures and means by which such evidence is to be presented, including the date at which any hearing to be afforded him is to be held. The hearing board may prescribe any procedures and means for these purposes which it may deem appropriate, provided that any hearing which may be afforded the recipient shall not be held sooner than seven days after the date of the mailing of the notice.

If no response to the hearing board's notice is made within the period specified in this section, the hearing board may suspend further assistance to the recipient and the suspension shall remain in effect not to exceed the ensuing two academic years.

After the conclusion of proceedings provided for in this section, the hearing board shall, by majority vote, determine whether further assistance to the recipient shall be suspended. If the recipient was arrested and convicted of a public offense arising from campus disruption, the suspension may remain in effect for a period not to exceed the ensuing two academic years. If the recipient is found by the hearing board to have willfully and knowingly disrupted the orderly operation of the campus, but has not been arrested and convicted, the hearing board may suspend further assistance to the recipient for the period as the hearing board may determine not to exceed the ensuing two academic years. If the recipient was suspended from an institution of higher education for these acts, the hearing board shall suspend further assistance to the recipient for a period not less than the time of the suspension. The findings of the hearing board shall be in writing.

The hearing board shall notify the appropriate state agencies of any suspension of state financial aid pursuant to this section, and no state financial aid shall be extended to the recipient during this period.

Any notice required to be made by this section shall be sufficient when it is deposited in the United States registered or certified mail, postage paid, addressed to the last known address of the addressee.

SEC. 3. Section 69812 of the Education Code is amended to read:

69812. Nothing in this chapter shall be construed to prohibit any public or private university, college, or other institution of higher education from suspending or refusing to grant scholarships, loans, fellowships, grants-in-aid, or any other financial aid given or guaranteed by the state for academic assistance to any individual because of any other misconduct which in its judgment bears adversely on his or her fitness for assistance.

SEC. 4. Effective January 1, 1988, Sections 69810, 69811, and 69812 of the Education Code shall become inoperative and have no force or effect until January 1, 1993. On January 1, 1993, Sections 69810, 69811, and 69812 of the Education Code shall become operative as amended by Sections 1, 2, and 3 of this act.

CHAPTER 679

An act to add Chapter 11 (commencing with Section 57401) to Division 20 of the Food and Agricultural Code, relating to dairy cattle.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 16, 1987.]

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

SECTION 1. Chapter 11 (commencing with Section 57401) is added to Division 20 of the Food and Agricultural Code, to read:

CHAPTER 11. DAIRY CATTLE SUPPLY LIEN

57401. (a) The definitions in this section govern the construction of this chapter.

(b) "Feed or materials" means commercial feed, grain, forage, feed ingredients, mineral feed, drugs, animal health products, customer-formula feed, any mixture or preparation for feeding animals, any of the constituent nutrients of an animal ration, or any other food which is used for the feeding of dairy cattle.

(c) "Proceeds" means funds derived from the sale of milk or milk products which are payable to the lien debtor by the possessor of the funds, except for any of the following:

(1) Deductions for taxes, fees, and assessments.

(2) Funds due or owing milk processing cooperative associations organized and operating pursuant to Chapter 1 (commencing with Section 54001).

(3) Funds retained by the cooperative association.

(4) Deductions made pursuant to a court order.

(5) Deductions due or owing the buyer of the milk for hauling services provided by the buyer pursuant to subdivision (e) of Section 62096 and deductions due or owing the buyer for the testing of milk for purposes of payment pursuant to Section 34231.

(d) "Raising or maintaining of dairy cattle" means feeding, pasturing, caring for, and managing dairy cattle kept or raised for use or profit.

(e) "Reasonable or agreed charges" means the agreed price, if any, for the feed and materials sold to the lien debtor, at the lien debtor's request. If there is no agreed price or a method for

determining price which is agreed upon, "reasonable or agreed charges" means the reasonable value of the feed or materials as of the date of delivery.

57402. A person who provides feed or materials to aid the raising or maintaining of dairy cattle has a lien upon the proceeds of the milk or milk products produced from the dairy cattle, for the reasonable or agreed charges for the feed or materials provided and for the costs of enforcing the lien. However, the amount of charges secured by the lien cannot exceed an amount equal to the reasonable or agreed charges for feed or material provided within a 45-day period, and only two providers of feed or materials shall have an enforceable lien at any time according to the priority set forth in Section 57406.

57403. (a) The lien created pursuant to this chapter attaches to proceeds.

(b) Except as otherwise provided in this chapter, the notice of claim of lien shall remain in effect, and no new notice of claim of lien shall be required in order to maintain the lien, as long as the person who provides feed or materials either (1) remains unpaid for amounts secured by the lien, or (2) continues to provide feed or materials on a regular basis to the lien debtor. For purposes of this section, providing feed or materials shall not be deemed to be made on a regular basis if a period of more than 30 days elapses between deliveries.

57405. The lien created by this chapter shall be perfected and shall be effective upon the filing of a notice of claim of lien with the Secretary of State pursuant to all the provisions of this section.

(a) The person who provides feed or materials may, at any time, file in the manner and at the place set forth in this section, the notice of claim of lien.

(b) The notice of claim of lien shall, at a minimum, set forth all of the following information:

(1) The name and address of the lien claimant.

(2) The name and address of the lien debtor.

(3) The location of the dairy to which the feed and materials were provided.

(4) That the lien claimant has a dairy cattle supply lien pursuant to Section 57402.

(c) The notice of claim of lien shall be signed by the lien claimant or by a person authorized to sign documents of a similar kind on behalf of the claimant.

(d) The notice of claim of lien shall be filed on a form which is the standard form of original financing statement prescribed by the Secretary of State pursuant to Section 9403 of the Commercial Code. The standard form shall be completed with the following changes:

(1) The lien claimant may be identified either as lien claimant or as secured party.

(2) The form shall be signed by the lien claimant and need not be signed by the debtor.

(3) In the space for the description of the collateral there shall

instead be entered the statement substantially as set forth in paragraphs (3) and (4) of subdivision (b).

(e) The notice of claim of lien shall be filed, indexed, and marked in the office of the Secretary of State in the same manner as a financing statement is filed, indexed, and marked pursuant to Section 9403 of the Commercial Code.

(f) The lien claimant shall provide written notice of the claim of lien to the lien debtor within 10 days of the date of the filing with the office of the Secretary of State.

(g) For the purpose of the Secretary of State's index pursuant to Section 9403 of the Commercial Code and for the purpose of the issuance of a certificate pursuant to Section 9407 or 9409 of the Commercial Code, the Secretary of State shall identify a notice pursuant to this section as a financing statement.

57406. (a) The lien created by this chapter shall have priority in accordance with the time the notice of claim of lien is filed.

(b) The lien created by this chapter shall have the same priority as a security interest perfected by the filing of a financing statement as of the date the notice of claim of lien was filed.

57407. Except to the extent specifically set forth in this chapter, the lien created by this chapter shall be subject to Division 9 (commencing with Section 9101) of the Commercial Code.

57408. A member of the public may obtain a certificate identifying whether there is a lien on file and any notice of claim of lien naming a particular debtor, and if so, giving the date and time of filing of each notice, and the names and addresses of each lienholder therein. The fee for the certificate is the same as the fee for a certificate issued pursuant to Section 9407 of the Commercial Code.

57409. A member of the public may obtain a copy of any notice of claim of lien filed pursuant to this chapter, including notices affecting the notices. The fee for these copies shall be the same as that prescribed in Section 9407 of the Commercial Code.

57410. The Secretary of State may adopt any regulations necessary to carry out his or her duties pursuant to this chapter, including prescribing necessary forms.

57411. A lien created pursuant to this chapter is assignable or transferable by the holder of the lien, with full rights of enforcement. A lienholder's statement of assignment or transfer shall be filed with the Secretary of State in the same manner as a secured party's statement of assignment or transfer as prescribed in Section 9406 of the Commercial Code.

57412. The lien claimant shall provide written notice to secured creditors at least 30 days prior to enforcing a claim of lien. For the purposes of this section, "secured creditors" means those creditors having a perfected security interest in dairy cattle, milk, milk products, or the proceeds thereof, as of the date the notice of claim of lien is filed with the Secretary of State.

57413. The lien claimant shall foreclose on a lien created by this

chapter only in an action to recover the reasonable or agreed charges for feed and materials delivered. The final judgment shall be enforced pursuant to Title 9 (commencing with Section 680.010) of the Code of Civil Procedure.

57414. (a) When a lien claimant receives payment for amounts secured by the lien and the lien claimant has not been providing feed or materials for a period of 30 consecutive days, the lien claimant shall, on written demand by the debtor, send the debtor a statement that he or she no longer claims a security interest under the statement, which shall be identified by date, names of parties thereto, and file number. If the affected lienholder of record fails to send such a termination statement within 10 days after proper demand therefor, he or she shall be liable to the debtor for all actual damages suffered by the debtor by reason of this failure, and, if the failure is in bad faith, for a penalty of one hundred dollars ($100).

(b) The filing officer shall mark each termination statement with the date and time of filing and shall index the statement under the name of the debtor and under the file number of the original lien. If the filing officer has a microfilm or other photographic record of the lien and related filings, he or she may remove the originals from the files at any time after receipt of the termination statement and destroy them, or if he or she does not have the record, he or she may remove them from those files at any time after one year after receipt of the termination statement and destroy them.

CHAPTER 680

An act to add Part 4 (commencing with Section 3001) to Division 1 of the Public Utilities Code, relating to gas.

[Approved by Governor September 16, 1987 Filed with Secretary of State September 16, 1987]

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

SECTION 1. Part 4 (commencing with Section 3001) is added to Division 1 of the Public Utilities Code, to read:

PART 4. PRODUCTION AND TRANSMISSION OF PUBLIC UTILITY COMMODITIES AND SERVICES

CHAPTER 1. GAS PRODUCERS' COOPERATIVE ASSOCIATIONS

Article 1. Definitions

3001. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

3002. "Association" means any corporation which is organized

pursuant to this chapter. An association is incorporated or organized pursuant to this chapter and is a producer of gas within the meaning of this chapter if it is functioning under, or is subject to, this chapter, regardless of whether it was originally incorporated pursuant to this chapter or was incorporated under other provisions of law.

3003. "Member" includes members of associations without capital stock and holders of common stock in associations which are organized with shares of stock.

3004. "Gas" means all gas produced in this state, natural or manufactured, except propane, for light, heat, or power.

Article 2. General Provisions

3021. The purpose of this chapter is to do all of the following:

(a) Promote, foster, and encourage the intelligent and orderly marketing of gas through cooperation.

(b) Make the delivery of gas from producer to distributor as direct as can be efficiently done.

(c) Free producers from unreasonable constraints imposed by limited access to market.

3022. In enacting this chapter, the Legislature finds and declares as follows:

(a) California gas production is an important part of the state's gas supply.

(b) The actual delivered cost of California produced gas is presently lower than the cost of alternative out-of-state and Canadian gas supplies.

(c) California gas is produced and made available by California businesses and California taxpayers employing California workers.

(d) California gas consumers are entitled to a "least cost supply mix" in the gas supplies made available to them for purchase.

(e) California consumers and California producers of gas are entitled to be free of artificial constraints and unreasonable burdens on the marketing of California gas at a fair price.

3023. Associations are "nonprofit," since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.

3024. Any provision of law which is in conflict with this chapter does not apply to any association.

3025. Any exemption under any existing law which applies to gas in the possession, or under the control, of the individual producer, applies equally to gas in the possession, or under the control, of an association.

3026. No person, corporation, or association, that is hereafter organized or doing business in this state, may use the word "cooperative" as part of its corporate name or other business name or title for gas producers' cooperative marketing activities, unless it has complied with this chapter.

3027. Any person, corporation, or association which is organized

pursuant to any previously existing statute for the purpose of cooperatively selling gas is deemed to be organized and existing pursuant to this chapter, and this chapter applies to that person, corporation, or association.

3028. An association is not any of the following:

(a) A conspiracy, a combination in restraint of trade, or an illegal monopoly.

(b) An attempt to lessen competition, to fix prices arbitrarily, or to create a combination or pool in violation of any law of this state.

(c) A public utility for any purpose under Part 1 (commencing with Section 201).

3029. The marketing contracts and agreements between an association and its members, and any agreements authorized in this chapter, are not illegal, in restraint of trade, or contrary to any statute which is enacted against pooling or combinations.

3030. The General Corporation Law (Division 1 (commencing with Section 100) of Title 1 of the Corporations Code) applies to each association which is organized pursuant to this chapter, except where this chapter provides otherwise. For the purpose of associations organized without shares of stock, the members are deemed to be "shareholders" as the term is used in the General Corporation Law.

3031. It is an unfair trade practice, and unlawful, for any gas corporation to do any of the following:

(a) Interfere with, restrain, coerce, or boycott any person engaged in the production of gas within the state in the exercise of any right described in this chapter.

(b) Discriminate against any person engaged in the production of gas within the state with respect to price, delivery, or other terms of purchase of gas by reason of membership in or contract with any association formed pursuant to this chapter.

(c) Pay or loan money or give any thing of value as an inducement or reward for refusing or ceasing to belong to, or for breaching one's membership agreement in, an association.

(d) Maliciously or knowingly give false reports about the finances, management, or activities of any person subject to this chapter.

(e) Refuse to negotiate or bargain at reasonable times and for reasonable periods of time with a genuine desire to reach agreement and a serious attempt to resolve differences with an association for price, terms of sale, terms of transportation, compensation for gas produced under contract, or any other contract provision relative to gas production represented by an association, except that nothing in this subdivision requires a gas corporation to reach agreement on price, delivery terms, transportation terms, compensation, or any other contract term.

Article 3. Purposes

3051. Three or more natural persons, all of whom are residents of this state, who are engaged in the production of gas within this state,

may form an association pursuant to this chapter for the purpose of engaging in any activity in connection with any of the following:

(a) The selling of gas produced by its members.

(b) The storing, handling, transportation, or utilization of gas or the manufacturing or making of byproducts of gas.

(c) The manufacturing, selling, or supplying to its members of machinery, equipment, or supplies.

(d) The financing of any activity specified in this section.

(e) The representation of its members in bargaining and negotiations concerning any sale of gas to a third party, either pursuant to an existing contract or a new contract.

Article 4. Articles of Incorporation

3061. The articles of incorporation of the association shall show that the signers of the articles of incorporation are engaged in the production of gas, state that they propose to incorporate an association pursuant to this chapter, and shall state all of the following:

(a) The name of the association.

(b) The purposes for which it is formed.

(c) The county where the principal office for the transaction of business of the association is to be located.

(d) The number of directors of the association, which shall be not less than three, and the names and addresses of the persons who are to serve as the first directors. If it is desired that the first directors serve for terms of different length, the term for which each person so named shall serve shall also be stated.

(e) If organized without shares of stock, whether the voting power and the property rights and interest of each member are equal or unequal. If voting power and property rights and interest of each member are unequal, the general rule or rules which are applicable to all members by which the voting power and the property rights and interests, respectively, of each member may be determined and fixed shall also be stated.

(f) If organized with shares of stock, the number of shares which may be issued and, if the shares are to have a par value, the par value of each share, and the aggregate par value of all shares. If the shares are to be without par value, it shall be so stated.

If the shares of stock are to be classified, a description of the classes of shares and a statement of the number of shares of each kind or class and the nature and extent of the preferences, rights, privileges, and restrictions which are granted to, or imposed upon, the holders of the respective classes of stock.

Except as to the matters and things so stated, no distinction shall exist between the classes of stock or the holders of them. One class of stock shall always be known as common stock, and the voting power may be restricted to holders of common stock.

3062. Articles of incorporation shall be signed, acknowledged,

and filed in the manner which is prescribed by the general laws of this state for domestic corporations.

3063. The articles of incorporation of any association may be amended in the manner and for the purposes which are authorized by the General Corporation Law (Division 1 (commencing with Section 100) of Title 1 of the Corporations Code).

Article 5. Bylaws

3081. Each association shall, within 30 days after its incorporation, adopt for its government and management a code of bylaws that is not inconsistent with this chapter. The vote or written assent of the members that hold at least a majority of the voting power is necessary to adopt the bylaws and is effective to repeal or amend the bylaws or to adopt additional bylaws.

The power to repeal and amend the bylaws, and to adopt new bylaws, may, by a similar vote or similar written assent, be delegated to the board of directors, which authority may, by a similar vote or similar written assent, be revoked.

3082. The bylaws may prescribe the time, place, and manner of calling and conducting meetings. Meetings of members shall be held at the place specified in the bylaws or, if no such provision is made, the meetings shall be held in the city where the principal place of business is located at a place designated by the board of directors. Meetings of the board of directors may be held at any place within or outside the state which is fixed by a majority of the board of directors, unless otherwise provided in the articles of incorporation or bylaws.

3083. The bylaws may prescribe the number of stockholders or members which constitutes a quorum.

3084. The bylaws may prescribe the right of members to vote by proxy or by mail, or both; the conditions, manner, form, and effects of their votes; the right of members to cumulate their votes; and the prohibition, if desired, of cumulative voting.

3085. The bylaws may prescribe the number of directors which constitutes a quorum.

3086. (a) The bylaws may prescribe the qualifications, compensation, duties, and term of office of the directors and officers and the time of their election.

(b) The number of directors set forth in the articles of incorporation shall be either a fixed number or a variable number. If a fixed number, it shall not be less than three. If a variable number, the stated minimum shall not be less than three and the stated maximum shall not be more than two times the stated minimum minus one.

(c) The number of directors may also be set forth in the bylaws either as a fixed number or as a variable number subject to the same limitations as in subdivision (b). After members have been admitted, any adoption or amendment of the bylaw provision shall be subject

to approval pursuant to Section 152 of the Corporations Code.

(d) In the event of an inconsistency between an article provision referred to in subdivision (b) and a bylaw provision referred to in subdivision (c), the provision more recently adopted or amended shall prevail.

(e) If a variable number of directors is set forth in the articles of incorporation or the bylaws, the exact number of directors shall be fixed, within the limits specified, by approval of the board of directors or by the members pursuant to Section 153 of the Corporations Code in the manner designated in the bylaws.

3087. The bylaws may prescribe penalties for violations of the bylaws.

3088. The bylaws may prescribe the amount of entrance, organization, and membership fees, if any; the manner and method of collection of these fees; and the purposes for which they may be used.

3089. The bylaws may prescribe the amount which each member shall be required to pay annually, or from time to time if at all, to carry on the business of the association; the charge, if any, to be paid by each member or for services rendered by the association and the time of payment and the manner of collection; and the marketing contract between the association and its members which every member may be required to sign.

3090. The bylaws may prescribe the amount of any dividends which may be declared on the stock or membership capital, which shall not exceed 8 percent per annum, shall be in the nature of interest, and shall not affect the nonprofit character of any association.

3091. The bylaws may prescribe the number and qualification of members of the association and the conditions precedent to membership; the method, time, and manner of permitting members to withdraw or to transfer their stock; the manner of assignment and transfer of the interest of members; the conditions upon which, and time when, membership of any member shall cease; the automatic supsension of the rights of a member who ceases to be eligible for membership in the association; and the mode, manner, and effect of the expulsion of a member.

3092. The bylaws may prescribe the manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or upon the expulsion of a member or forfeiture of membership or, at the option of the association, the purchase at a price fixed by conclusive appraisal by the board of directors. In case of the expulsion of a member, and where the bylaws do not provide any procedure or penalty, the board of directors shall equitably and conclusively appraise the member's property interest in the association and shall fix the amount of that property interest in money, which shall be paid to the member within one year after expulsion.

Article 6. Directors and Management

3101. The affairs of the association shall be managed by a board of not less than three directors who are elected by the members.

3102. The bylaws may provide that the territory in which the association has members shall be divided into districts and that directors shall be elected from the several districts. In that case, the bylaws shall specify the number of directors to be elected by each district, and the manner and method of reapportioning the directors and of redistricting the territory of the association.

3103. The bylaws may provide that primary elections shall be held to nominate directors. If the bylaws provide that the territory in which the association has members shall be divided into districts, the bylaws may also provide that the results of the primary elections in the various districts shall be final and shall be ratified at the annual meeting of the association.

3104. The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected by representatives or advisers, who themselves have been elected by the members from the districts. In that case, the bylaws shall specify the number of representatives or advisers to be elected by each district, and the manner and method of reapportioning the representatives or advisers and of redistricting the territory of the association.

3105. The bylaws may provide that one or more directors may be appointed by any public official or commission or by the other directors selected by the members. These directors so appointed shall represent primarily the interest of the general public. These directors shall have the same powers and rights as the other directors. The directors so chosen shall not number more than one-fifth of the entire number of directors.

3106. The bylaws may provide for an executive committee and may delegate to the committee all the functions and powers of the board of directors, subject to the general direction and control of the board.

3107. The association may provide a fair remuneration for the time which is actually spent by its officers and directors in its service and for the service of the members of its executive committee.

3108. If a vacancy on the board of directors occurs except by expiration of a term, the remaining members of the board, by a majority vote, shall fill the vacancy unless the bylaws provide for an election of directors by districts. If the bylaws provide for an election of directors by districts, the vacancy shall be filled by the election of a director from the district in which the vacancy occurs or the board may call a special meeting of the members in that district to fill the vacancy.

3109. The directors shall elect a president, one or more vice presidents, a secretary, a treasurer, and any other officers that may be prescribed by the bylaws. Any two or more offices, except those

of president and secretary, may be held by the same person.

The treasurer may be a bank or any depository and, as such, shall not be considered an officer, but a function of the board of directors. In that case, the secretary shall perform the usual accounting duties of the treasurer, except that the funds shall be deposited only, as, and where authorized by the board.

3110. Any member may bring charges against an officer or director by filing them, in writing, with the secretary of the association, together with a petition which is signed by 5 percent of the members, which requests the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom charges have been brought shall be informed, in writing, of the charges prior to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses. The person bringing the charges against the director or officer shall have the same opportunity.

If the bylaws provide for election of directors by districts with primary elections in each district, the petition for removal of a director shall be signed by 20 percent of the members that reside in the district from which the director was elected. The board of directors shall call a special meeting of the members that reside in that district to consider the removal of the director and, by a vote of the majority of the members of that district, the director in question shall be removed from office.

Article 7. Powers

3121. An association may engage in any activity in connection with the selling, transporting, or storing of gas which is produced and delivered to it by its members; in any activity in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment, or in the financing of any of these activities; or in any one or more of the activities which are specified in this section.

3122. An association may borrow without limitation as to amount of corporate indebtedness or liability and may make advances to members.

3123. An association may act as the agent or representative of any member in any of the activites specified in Section 3171 or 3172.

3124. An association may purchase or otherwise acquire, hold, own, and exercise all rights of ownership in, sell, transfer, pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares of the capital stock or bonds of any corporation or association which is engaged in the production of gas or any related activity.

3125. An association may establish reserves and invest the funds of the reserves in bonds or in any other property as may be provided

in the bylaws.

3126. An association may buy, hold, and exercise all privileges of ownership of real or personal property as may be necessary or convenient for the conduct and operation of, or incidental to, any business of the association.

3127. An association may levy assessments in the manner and in the amount as may be provided in its bylaws.

3128. An association may do all of the following:

(a) Do each and every thing which is necessary, suitable, or proper for the accomplishment of any of the purposes, or the attainment of any of the objects, specified in this chapter, or conducive to or expedient for the interest or benefit of the association, and contract accordingly.

(b) Exercise and possess all powers, rights, and privileges which are necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged.

(c) Have any other rights, powers, and privileges which are granted by the laws of this state to other corporations, except those which are inconsistent with this chapter.

3129. An association may use or employ any of its facilities for any purpose if the proceeds which arise from that use or employment go to reduce the cost of operation for its members. Any products which are handled for, or the services, machinery, equipment, or supplies or facilities which are furnished to, nonmembers shall not, however, exceed in value the products which are handled for, or the services, merchandise, or facilities which are supplied to, members during the same period.

3130. An association may organize, form, operate, own, control, and have an interest in, own stock of, or be a member of any other corporation, with or without capital stock, which is engaged in producing, transporting, or selling of gas.

3131. An association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements, contracts, and arrangements with any other cooperative or other corporation or association, which is formed in this or in any other state, for the cooperative and more economical carrying on of its business or any part of its business.

Any two or more associations may, by agreement between them, unite in employing and using, or may separately employ and use, the same personnel, methods, means, and agencies for carrying on and conducting their respective business.

Article 8. Financial Provisions

3151. (a) Any share or membership issued by an association is exempt from Part 1 (commencing with Section 25100) of Division 1 of Title 4 of the Corporations Code if the aggregate investment of a shareholder or member in shares or memberships sold by an

association does not exceed one thousand dollars ($1,000).

(b) This exemption does not apply to the shares or memberships in an association if any promoter of those shares or memberships expects or intends to make a profit directly or indirectly from any business or activity associated with the association or from the operation of the association or to receive a salary or other remuneration from the association. Furthermore, this exemption does not apply to nonvoting shares or memberships in an association issued to any person who does not possess, and who will not acquire in connection with the issuance of nonvoting memberships, voting power in the association.

3152. If an association issues nonpar value stock, the issuance of that stock shall be governed by the terms of all general laws which cover the issuance of nonpar value stock in domestic corporations.

3153. If an association with preferred shares of stock purchases the stock or any property, or any interest in any property, of any person, it may discharge the obligations which are so incurred, in whole or in part, by exchanging for the acquired interest, shares of its preferred stock to an amount which at par value would equal the fair market value of the stock or interest so purchased, as determined by the board of directors. In that case, the transfer to the association of the stock or interest which is purchased is equivalent to payment in cash for the shares of stock which are issued.

3154. The board of directors of an association shall cause to be sent to the members of the association, not later than 120 days after the close of the fiscal or calendar year, an annual report of the operations of the association, unless that report is expressly dispensed with in the bylaws.

If required by the bylaws, interim reports of the operations of the association for the three month, six month, or nine month periods of the current fiscal year of the association shall be furnished to the members of the association.

The annual report and any interim reports shall include a balance sheet as of the closing date. The financial statement shall be prepared from, and be in accordance with, the books. It shall be prepared in a form consistent with generally accepted accounting principles or in consultation with a certified public accountant or a public accountant.

Article 9. Members

3171. Under the terms and conditions which are prescribed in the bylaws adopted by it, an association may admit as members or issue common stock to only those persons engaged in the production of gas which is to be handled by or through the association, or that use or employ any service or facility offered by the association on, or in connection with, land which is used for the production of gas, including the lessees and tenants of land which is used for the production of gas and any lessors and landlords that receive as rent

all or part of the gas which is produced on the leased premises.

3172. If a member of a nonstock association is other than a natural person, that member may be represented by any individual, associate, officer, manager, or member of it who is authorized in writing to do so.

3173. Any association may become a member or stockholder of any other association.

3174. If a member of an association which is established without shares of stock has paid the prescribed membership fee in full, the member shall receive a certificate of membership.

3175. An association shall not issue a certificate for stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but that retention as security does not affect the member's right to vote.

3176. An association, in its bylaws, may limit the amount of common stock which any member may own.

3177. The bylaws shall prohibit the transfer of the common stock or membership certificates of the associations to any person that is not qualified to be a shareholder or member, as specified in this chapter. These restrictions shall be printed upon every certificate of stock or membership which is subject to them.

3178. The association may, at any time, as specified in the bylaws, except when the debts of the association exceed 50 percent of its assets, buy in or purchase its common stock at the book value of the common stock, as conclusively determined by the board of directors, and pay for it in cash within one year thereafter.

3179. A member is not liable for the debts of the association in an amount which exceeds the sum which remains unpaid on the member's or stockholder's membership fee or subscription to the capital stock, including any unpaid balance on any promissory note which is given in payment of the membership fee or the subscription to the capital stock.

3180. No public utility, corporation holding a controlling interest in a public utility, or subsidiary or affiliate of a public utility may be a member of an association organized pursuant to this chapter.

3181. No producer of gas owning or controlling petroleum refining capacity of 100,000 or more barrels per day in California, or a producer of gas owned or controlled by a producer of gas owning or controlling petroleum refining capacity of 100,000 or more barrels per day in California, may be a member of an association organized pursuant to this chapter.

Article 10. Marketing Contracts

3201. The association and its members may make and execute marketing contracts which require the members to sell, for any period of time not to exceed the productive life of the gas facilities

or supplies, all or any specified part of any gas produced by the members exclusively to or through the association or any facilities of the association. If the members contract a sale to the association, title to the gas passes absolutely and unreservedly, except for recorded liens, to the association upon delivery or at any other specified time which is expressly and definitely agreed in the contract.

3202. The contract may provide that the association may sell or resell any gas which is delivered by its members, with or without taking title to the gas, and pay over to its members the resale price, after deducting all of the following:

(a) Necessary selling, overhead, and other costs and expenses, including interest on preferred stock, not exceeding 8 percent per annum, and reserves for retiring the stock, if any.

(b) Other proper reserves.

(c) Interest not exceeding 8 percent per annum upon common stock.

3203. Notwithstanding any provision of the Civil Code, a contract which is entered into by a member of an association which provides for the delivery to the association of any gas produced by the member may be specifically enforced by the association to secure the delivery to it of that gas.

3204. The bylaws or the marketing contract may fix, as liquidated damages, specific sums to be paid by the member to the association for the breach of any provision of the marketing contract regarding the sale or delivery or withholding of gas and may provide that the member will pay all costs, premiums for bonds, expenses, and fees, if any action is brought upon the contract by the association. These provisions are valid and enforceable in the courts of this state. Provisions for liquidated damages are enforceable as such and shall not be regarded as penalties.

3205. If there is a breach or threatened breach of a marketing contract by a member, the association may file an action for an injunction to prevent the further breach of the contract and for a decree of specific performance of the contract. Pending the adjudication of that action and upon filing a verified complaint which shows the breach or threatened breach, and upon filing a sufficient bond, the association shall be issued a temporary restraining order and preliminary injunction against the member.

3206. In any action upon a marketing agreement, it is conclusively presumed that a landowner, landlord, or lessor is able to control the delivery of any gas which is produced on his or her land by the tenants or others, whose tenancy or possession on the land, or the terms of whose tenancy or possession on the land were created or changed after execution by the landowner, landlord, or lessor of the marketing agreement. In that action, the remedies for nondelivery or breach which are provided by this article are enforceable against the landowner, landlord, or lessor.

Article 11. Reorganization of Corporations Organized Pursuant to Other Laws

3221. Any corporation which is organized or existing pursuant to any other law may be brought under this chapter by amending its articles of incorporation, in the manner which is prescribed by the general corporation laws, to conform to this chapter. If any corporation amends its articles of incorporation to conform to this chapter, it is deemed to be organized and existing pursuant to, entitled to the benefit of, and subject to, this chapter for all purposes and as fully as though it had been originally organized pursuant to this chapter.

3222. Articles of incorporation are deemed to conform to this chapter within the meaning of Section 3291 in both of the following cases:

(a) It is provided or declared in the articles of incorporation, in substance, regardless of form, that the corporation is organized and exists as a nonprofit cooperative corporation for the purposes which are provided for in, or permitted by, this chapter, or one or more of those purposes.

(b) It clearly appears from the articles of incorporation that the corporation desires to be subject to, and to be organized, exist, and function pursuant to, this chapter.

3223. If the amended articles conform, as provided in Section 3222, provisions in the articles of incorporation that appeared in the original articles or some previous amended articles are ineffective if, and to the extent that, they are inapplicable to, or inconsistent with, this chapter.

3224. This article applies retrospectively as well as prospectively, and may be availed of by a corporation regardless of the time of incorporation, whether prior or subsequent to the adoption of this article, and shall apply to amendments to articles of incorporation whether made prior or subsequent to the adoption of this article, and all amendments made prior to the adoption of this article shall be effective and valid to the same extent as though made subsequent to the adoption of this article.

CHAPTER 681

An act to amend Sections 97.5 and 4703 of, and to add Section 97.51 to, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 17, 1987]

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

SECTION 1. Section 97.5 of the Revenue and Taxation Code is amended to read:

97.5. Except as otherwise provided in Section 97.51, for the purpose of apportioning property tax revenues each fiscal year:

(a) The amount of property tax revenue allocated pursuant to subdivisions (a) and (b) of Section 96 or subdivision (a) of Section 97, modified by any adjustments made pursuant to Section 99 or 99.4, and subdivision (e) of Section 98, shall be combined to compute the total amount of property tax revenue allocated to the jurisdiction with respect to the tax rate area.

(b) The total amount of property tax revenue allocated to each jurisdiction with respect to all tax rate areas as determined pursuant to subdivision (a) shall be added to compute a total amount of property tax revenue for a jurisdiction in all tax rate areas.

(c) Each amount determined pursuant to subdivision (b) shall be divided by the total of all such amounts computed. The quotient determined shall be used to apportion actual property tax collections and shall be known as the "property tax apportionment factors."

(d) For 1980–81 and each year thereafter, the property tax apportionment factors for the current year shall be used to apportion the total amount paid to a county annually for reimbursement of tax loss from business inventory exemptions pursuant to Chapter 1150 of the Statutes of 1979.

(e) For 1980–81 and each year thereafter, prior years' property tax revenues shall be apportioned using the factors determined pursuant to subdivision (c) for the immediately preceding fiscal year.

(f) For 1979–80, prior years' property tax revenues shall be apportioned using the tax allocation factors computed pursuant to Section 26912 of the Government Code.

(g) Notwithstanding the provisions of this section property tax revenues may be apportioned by tax rate area.

(h) Supplemental property tax revenues for 1985–86 and each year thereafter, generated by Sections 75 to 75.80, inclusive, shall be apportioned using the property tax apportionment factors for the current year.

SEC. 2. Section 97.51 is added to the Revenue and Taxation Code, to read:

97.51. (a) Notwithstanding any other provision of this chapter, in

the County of Solano, the apportionment of property tax revenues made pursuant to Section 97.5, for the 1987–88 fiscal year only, shall be modified as follows:

(1) The auditor shall increase by the sum of two hundred sixty-three thousand dollars ($263,000) the total amount of property tax revenues apportioned to the City of Suisun.

(2) The auditor shall reduce by the sum of ninety thousand dollars ($90,000) the total amount of property tax revenue apportioned to the Solano County General Fund.

(3) The auditor shall reduce by the total sum of one hundred seventy-three thousand dollars ($173,000) the total amount of property tax revenue apportioned to all of the following: the Solano County Free Library; the Greater Vallejo Recreation District; the Solano County Water Conservation District; the Solano County Accumulated Capital Outlay Fund; the Solano County Aviation; the Solano County Recreation; the Solano County Zone of Benefit 1; the Solano County Library Special Tax Zone 1; the Fairfield-Suisun Cemetery District; the Solano County portion of the Bay Area Air Quality Management District; and the Cities of Benicia, Dixon, Fairfield, Vacaville, Rio Vista, and Vallejo. The reduction required by this paragraph shall be made by the auditor by computing that percentage of the total amount of property tax revenue allocated to all of the jurisdictions and funds specified in this paragraph which equals one hundred seventy-three thousand dollars ($173,000) and by reducing the total amount of property tax revenue allocated to each of those jurisdictions and funds by that percentage.

(b) For the 1988–89 fiscal year and each fiscal year thereafter, the auditor shall increase the total amount of property tax revenue apportioned to the City of Suisun pursuant to Section 97.5 by the same percentage by which the total amount of property tax revenue to be apportioned to the city pursuant to Section 97.5 in the 1987–88 fiscal year was increased by the application of subdivision (a).

(c) For the 1988–89 fiscal year and each fiscal year thereafter, the auditor shall reduce the total amount of property tax revenue apportioned to each jurisdiction and fund specified in paragraphs (2) and (3) of subdivision (a) as follows:

(1) The auditor shall compute for each jurisdiction and fund that percentage of the total amount of the property tax revenue reduction required by subdivision (a) for the 1987–88 fiscal year which is equal to the total amount of its property tax revenue reduction for that fiscal year.

(2) The auditor shall reduce the total amount of the property tax revenue apportioned to each jurisdiction and fund for the applicable fiscal year by the amount determined by multiplying the percentage computed for the jurisdiction or fund in paragraph (1) by the total amount of the increase computed in subdivision (b).

SEC. 3. Section 4703 of the Revenue and Taxation Code is amended to read:

4703. In each county which elects to adopt the procedure

authorized by this chapter there is hereby created a tax losses reserve fund.

(a) The tax losses reserve fund shall be used exclusively, as hereinafter provided, to cover losses which may occur in the amount of tax liens as a result of special sales of tax-defaulted property. Except as provided in subdivision (b), whenever in any year the amount of the tax losses reserve fund shall have reached an amount equivalent to 4 percent of the total of all taxes and assessments levied on the secured roll for that year the amounts hereinafter authorized to be credited to that fund shall, for the remainder of that year, be credited to the county general fund.

(b) If any county for which the rate of secured tax delinquency has been 3 percent or less for the preceding three consecutive fiscal years, whenever in any year the amount of the tax losses reserve fund shall have reached the amount equivalent to 3 percent of the total of all taxes and assessments levied on the secured rolls for that year the amounts hereinafter authorized to be credited to that fund shall, for the remainder of that year, be credited to the county general fund.

(c) If any county utilizing the procedure set forth in subdivision (b) incurs a rate of secured tax delinquency for one fiscal year that exceeds 3 percent of the total of all taxes and assessments levied on the secured rolls, the provisions of subdivision (a) shall apply, including the 4-percent limit, until such time as the rate of secured tax delinquency has been 3 percent or less for three consecutive years at which time the provisions of subdivision (b) shall again apply.

(d) The auditor and treasurer shall keep apportioned tax resources accounts in such a manner that the balance of amounts apportioned to funds on an accrual basis shall be known by both officers. In addition, the auditor shall keep secured taxes receivable accounts in such a manner as to establish accountability for the amounts receivable on the secured tax rolls. Secured tax rolls as used in this chapter include delinquent rolls prescribed by Section 2627.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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.

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 ensure timely implementation of the changes in the distribution of Solano County property tax revenues for the 1987–88 fiscal year provided for in this act, it is necessary for this act to go into immediate effect.

CHAPTER 682

An act to repeal and add Section 7729 of the Business and Professions Code, relating to funeral directors and embalmers, and making an appropriation therefor.

[Approved by Governor September 16, 1987 Filed with Secretary of State September 17, 1987.]

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

SECTION 1. Section 7729 of the Business and Professions code is repealed.

SEC. 2. Section 7729 is added to the Business and Professions Code, to read:

7729. The amount of the fees prescribed by this chapter shall be fixed according to the following schedule with the minimum amount specified being the amount fixed on January 1, 1988. However, the board may thereafter, but not prior to January 1, 1989, fix the fees at a greater amount, not to exceed the maximum amount specified herein:

(a) The application fee for a funeral director's license shall be not less than three hundred dollars ($300) and not more than four hundred dollars ($400).

(b) The application fee for change of location of a funeral director's license shall be not less than one hundred fifty dollars ($150) and not more than two hundred fifty dollars ($250).

(c) The application fee for permission to assign a funeral director's license shall be not less than two hundred dollars ($200) and not more than three hundred dollars ($300).

(d) The license renewal fee payable by a licensed funeral director shall be not less than three hundred dollars ($300) and not more than four hundred dollars ($400). The fee for a delinquent renewal of a funeral director's license shall be 150 percent of the timely renewal fee.

(e) The application fee for an embalmer's license and the examination for the license shall be not less than one hundred dollars ($100) and not more than one hundred fifty dollars ($150).

(f) The renewal fee payable by a licensed embalmer shall be not less than seventy-five dollars ($75) and not more than one hundred twenty-five dollars ($125). The fee for a delinquent renewal of an embalmer's license shall be 150 percent of the timely renewal fee.

(g) The application fee for a certificate of registration as an apprentice embalmer shall be not less than thirty dollars ($30) and not more than sixty dollars ($60).

(h) The fee for an application by a funeral director for approval to train apprentice embalmers and for renewal of that approval shall be not less than fifty dollars ($50) and not more than one hundred dollars ($100).

(i) The application fee for a funeral director's examination shall be not less than seventy-five dollars ($75) and not more than one hundred dollars ($100).

(j) The fee for a timely filing of an individual report or a combined report on preneed trust funds shall be not less than one hundred dollars ($100) and not more than two hundred dollars ($200). The fee for a late filing of any report on preneed trust funds shall be 150 percent of the applicable timely fee.

(k) The application fee for permission to change the name appearing on a funeral director's license shall be not less than one hundred dollars ($100) and not more than two hundred dollars ($200), and for permission to change the name on any other license or certificate, not less than twenty dollars ($20) and not more than forty dollars ($40).

(*l*) The application fee for a duplicate funeral director's license, a duplicate embalmer's license, or a duplicate certificate of registration as an apprentice embalmer, shall be not less than twenty dollars ($20) and not more than forty dollars ($40).

(m) The fee for filing a report of a change of corporate officers, managers, or preneed trust fund trustees shall be not less than twenty-five dollars ($25) and not more than fifty dollars ($50).

CHAPTER 683

An act to add Sections 22810.5, 22813.5, 22813.6, and 22825.8 to the Government Code, relating to state employees.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 17, 1987]

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

SECTION 1. Section 22810.5 is added to the Government Code, to read:

22810.5. (a) Participation in a low-cost health benefits plan, developed and authorized by the board specifically as part of a flexible benefits program, is restricted to active state employees who are (1) excluded from the definition of state employee in subdivision (c) of Section 3513; (2) supervisory employees as defined in Section 3522.1; (3) employees of the executive branch of government who are not members of the civil service; and (4) employees of the California State University System as defined in subdivision (e) of Section 3562 and supervisory employees as defined by Section 3580.3.

(b) If this section is in conflict with a memorandum of understanding reached pursuant to Section 3517.5 or Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding is controlling without further legislative action, except that if the memorandum of understanding

requires the expenditure of funds, it shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 2. Section 22813.5 is added to the Government Code, to read:

22813.5. Thirty days prior to or 30 days following retirement and on an annual basis thereafter, a nonrepresented employee who is enrolled in the flexible benefits plan shall be given the option to elect coverage in any health plan which is contracted for by the board in accordance with Section 22813 and receive the employer's contribution toward the health benefits premium as determined in Section 22825.1.

SEC. 3. Section 22813.6 is added to the Government Code, to read:

22813.6. During the first health benefits open enrollment period following any personnel transaction which changes the status of a nonrepresented employee who is enrolled in a flexible benefits program to that of a represented employee, the employee shall be given the option to elect coverage in any health plan which is contracted for by the board in accordance with Section 22813 and receive the employer's contribution toward the health benefits premium as determined in Section 22825.1.

SEC. 4. Section 22825.8 is added to the Government Code, to read:

22825.8. Notwithstanding any other provision of this article, any low-cost health benefits plan authorized by Section 22810.5 and developed specifically as part of a flexible benefits program shall not be used to compute the state employer contribution toward a state employee or annuitant health benefits premium.

CHAPTER 684

An act to amend Sections 3755 and 3775 of, and to add Section 3775.5 to, the Financial Code, relating to financial institutions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 1987 Filed with Secretary of State September 17, 1987.]

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

SECTION 1. Section 3755 of the Financial Code is amended to read:

3755. Section 3754 shall not be interpreted to prohibit, to the extent otherwise authorized by the laws of this state and of the United States, the acquisition of, merger or consolidation with, or the acquisition of the assets of, a California bank or a California bank holding company by a bank or a bank holding company that has, or is controlled by a company that has, its head office located, or its

operations principally conducted, outside the United States, if the non-United States bank or bank holding company and any company that controls the non-United States bank or bank holding company meets any of the following criteria:

(a) It controls no bank or branch within the United States.

(b) It controls within the United States only banks or branches within California.

(c) It has established its home state, in accordance with Section 5(c) of the International Banking Act of 1978 (12 U.S.C. Sec. 3103 (c)), in California or a state that has substantial reciprocity with California, as determined by the superintendent pursuant to Section 3756.

(d) It acquires the California bank by merger, consolidation, or acquisition of assets, through its California bank subsidiary, and that subsidiary was established and operated as authorized in Section 5(b) of the International Banking Act of 1978 (12 U.S.C. Sec. 3103 (b)).

SEC. 2. Section 3775 of the Financial Code is amended to read:

3775. Section 3774 shall not be interpreted to prohibit, to the extent otherwise authorized by the laws of this state and of the United States, the acquisition of, merger or consolidation with, or the acquisition of the assets of, a California bank or a California bank holding company by a bank or a bank holding company that has, or is controlled by a company that has, its head office located, or its operations principally conducted, outside the United States, if the non-United States bank or bank holding company and any company that controls the non-United States bank or bank holding company meets any of the following criteria:

(a) It controls no bank or branch within the United States.

(b) It controls within the United States only banks or branches within California.

(c) It has established its home state, in accordance with Section 5(c) of the International Banking Act of 1978 (12 U.S.C. Sec. 3103 (c)), in California or one of the states described in Section 3773 which has substantial reciprocity with California, as determined by the superintendent pursuant to Section 3776.

(d) It acquires the California bank by merger, consolidation, or acquisition of assets, through its California bank subsidiary, and that subsidiary was established and operated as authorized in Section 5(b) of the International Banking Act of 1978 (12 U.S.C. Sec. 3103 (b)).

SEC. 3. Section 3775.5 is added to the Financial Code, to read:

3775.5. Nothing in this chapter prohibits any company from acquiring a credit card portfolio, or portions thereof, from a California bank.

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:

Chapter 1250 of the Statutes of 1986 enacted Chapter 21.6 (commencing with Section 3770) of Division 1 of the Financial Code, which established, operative July 1, 1987, the conditions under which bank holding companies from specified states other than California could acquire, or merge or consolidate with, a California bank or bank holding company or acquire a majority of the assets of a California bank or bank holding company. Since the enactment of Chapter 1250, questions have arisen about the effect of Section 3775 of the Financial Code on activities of foreign (other nation) banks and bank holding companies which were permitted to them under prior law. In order to clarify, as soon as possible, that Chapter 21.6 (commencing with Section 3770) of Division 1 of the Financial Code was not intended to prohibit activities permitted under prior law to foreign (other nation) banks and bank holding companies, it is necessary that this act go into immediate effect.

CHAPTER 685

An act to amend Section 25608 of, and to add and repeal Section 25608.2 of, the Business and Professions Code, relating to alcoholic beverages.

[Became law without Governor's signature Filed with Secretary of State September 17, 1987]

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

SECTION 1. Section 25608 of the Business and Professions Code is amended to read:

25608. Every person who possesses, consumes, sells, gives, or delivers to any other person, any alcoholic beverage in or on any public schoolhouse or any of the grounds thereof, is guilty of a misdemeanor. This section does not, however, make it unlawful for any person to acquire, possess, or use any alcoholic beverage in or on any public schoolhouse, or on any grounds thereof, if any of the following applies:

(a) The alcoholic beverage is acquired, possessed, or used in connection with a course of instruction given at the school and the person has been authorized to acquire, possess, or use it by the governing body or other administrative head of the school.

(b) The public schoolhouse is surplus school property and the grounds thereof are leased to a lessee which is a general law city with a population of less than 50,000, or the public schoolhouse is surplus school property and the grounds thereof are located in an unincorporated area and are leased to a lessee which is a civic organization, and the property is to be used for community center purposes and no public school education is to be conducted thereon by either the lessor or the lessee and the property is not being used

by persons under the age of 21 years for recreational purposes at any time during which alcoholic beverages are being sold or consumed on the premises.

(c) The alcoholic beverages are acquired, possessed, or used during events at a college-owned or operated veterans stadium with a capacity of over 12,000 people, located in a county with a population of over six million people. As used in this subdivision, "events" mean football games sponsored by a college, other than a public community college, or other events sponsored by noncollege groups.

(d) The alcoholic beverages are acquired, possessed, or used during an event not sponsored by any college at a performing arts facility built on property owned by a community college district and leased to a nonprofit organization which is a public benefit corporation formed under Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code. As used in this subdivision, "performing arts facility" means an auditorium with more than 1,000 permanent seats.

(e) The alcoholic beverage is wine for sacramental or other religious purposes and is used only during authorized religious services held on or before January 1, 1995.

(f) The alcoholic beverages are acquired, possessed, or used during an event at a community center owned by a community services district and the event is not held at a time when students are attending a public school sponsored activity at the center.

Any person convicted of a violation of this section shall, in addition to the penalty imposed for the misdemeanor, be barred from having or receiving any privilege of the use of public school property which is accorded by Article 2 (commencing with Section 82530) of Chapter 8 of Part 49 of the Education Code.

SEC. 2. Section 25608.2 is added to the Business and Professions Code, to read:

25608.2. Notwithstanding Section 25608, any person may acquire, possess, or use any alcoholic beverage in or on any public schoolhouse, or any grounds thereof, if the alcoholic beverage is beer and wine served only in connection with the 100th year anniversary of a city in a county of the 20th class, at a single event to be held on May 14, 1988, with the approval of the local school district.

This section is operative until January 1, 1989 and on that date is repealed.

CHAPTER 686

An act to add Sections 14087.57 and 14133.4 to the Welfare and Institutions Code, and to repeal Section 149.1 of Chapter 323 of the Statutes of 1983, relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 17, 1987]

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

SECTION 1. Section 14087.57 is added to the Welfare and Institutions Code, to read:

14087.57. Notwithstanding any provision of law, a member of the commission authorized by Section 14087.51 shall not be deemed to be interested in a contract entered into by the commission within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all of the following apply:

(a) The board of supervisors appointed the member to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(b) The contract authorizes the member or the organization the member represents to provide services to Medi-Cal beneficiaries under the commission's program.

(c) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the member was appointed to represent.

(d) The member does not influence or attempt to influence the commission or another member of the commission to enter into the contract in which the member is interested.

(e) The member discloses the interest to the commission and abstains from voting on the contract.

(f) The commission notes the member's disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

SEC. 2. Section 14133.4 is added to the Welfare and Institutions Code, to read:

14133.4. Notwithstanding any other provision of law, utilization controls adopted by the State Department of Health Services shall not include prior authorization for portable X-ray services provided in skilled nursing or intermediate care facilities, as defined in Section 1250 of the Health and Safety Code.

SEC. 3. Section 149.1 of Chapter 323 of the Statutes of 1983 is repealed.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this

act is in accordance with the request of a local agency which desired legislative authority to carry out the program specified in this act. 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 continuation of the prohibition against requiring prior authorization from the State Department of Health Services for the provision of portable X-ray services provided in skilled nursing or intermediate care facilities under the Medi-Cal program, and in order to apply the provisions of this act to the special commission in San Mateo County prior to the end of the 1987 calendar year, it is necessary that this act go into immediate effect.

CHAPTER 687

An act to amend Section 1017 of the Evidence Code, and to amend Sections 1615, 1617, 1618, 1619, 1620, 2962, 2966, 2972, and 2978 of, and to add Section 2981 to, the Penal Code, relating to mentally disordered offenders.

[Approved by Governor September 16, 1987 Filed with Secretary of State September 17, 1987]

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

SECTION 1. Section 1017 of the Evidence Code is amended to read:

1017. (a) There is no privilege under this article if the psychotherapist is appointed by order of a court to examine the patient, but this exception does not apply where the psychotherapist is appointed by order of the court upon the request of the lawyer for the defendant in a criminal proceeding in order to provide the lawyer with information needed so that he or she may advise the defendant whether to enter or withdraw a plea based on insanity or to present a defense based on his or her mental or emotional condition.

(b) There is no privilege under this article if the psychotherapist is appointed by the Board of Prison Terms to examine a patient pursuant to the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

SEC. 2. Section 1615 of the Penal Code is amended to read:

1615. Pursuant to Section 5709.8 of the Welfare and Institutions Code, the State Department of Mental Health shall be responsible for the community treatment and supervision of judicially committed patients. These services shall be available on a county or regional basis. The department may provide these services directly or through contract with private providers or counties. The program

or programs through which these services are provided shall be known as the Mental Health Conditional Release Program.

The department shall contact all county mental health programs by January 1, 1986, to determine their interest in providing an appropriate level of supervision and treatment of judicially committed patients at reasonable cost. County mental health agencies may agree or refuse to operate such a program.

The State Department of Mental Health shall ensure consistent data gathering and program standards for use statewide by the Mental Health Conditional Release Program.

SEC. 3. Section 1617 of the Penal Code is amended to read:

1617. The State Department of Mental Health shall research the demographic profiles and other related information pertaining to persons receiving supervision and treatment in the Mental Health Conditional Release Program. An evaluation of the program shall determine its effectiveness in successfully reintegrating these persons into society after release from state institutions. This evaluation of program effectiveness shall include, but not be limited to, a determination of the rates of reoffense while these persons are served by the program and after their discharge. This evaluation shall also address the effectiveness of the various treatment components of the program and their intensity.

The State Department of Mental Health may contract with an independent research agency to perform this research and evaluation project. Any independent research agency conducting this research shall consult with the Forensic Mental Health Association concerning the development of the research and evaluation design.

SEC. 4. Section 1618 of the Penal Code is amended to read:

1618. The administrators and the supervision and treatment staff of the Mental Health Conditional Release Program shall not be held criminally or civilly liable for any criminal acts committed by the persons on parole or judicial commitment status who receive supervision or treatment. This waiver of liability shall apply to employees of the State Department of Mental Health and the agencies or persons under contract to this department to provide supervision or treatment to mentally ill parolees or persons under judicial commitment.

SEC. 5. Section 1619 of the Penal Code is amended to read:

1619. The Department of Justice shall automate the criminal histories of all persons treated in the Mental Health Conditional Release Program, as well as all persons committed as not guilty by reason of insanity pursuant to Section 1026, incompetent to stand trial pursuant to Section 1370 or 1370.2, any person currently under commitment as a mentally disordered sex offender, and persons treated pursuant to Section 1364 or 2684 or Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3.

SEC. 6. Section 1620 of the Penal Code is amended to read:

1620. The Department of Justice shall provide mental health

agencies providing treatment to patients pursuant to Sections 1600 to 1610, inclusive, or pursuant to Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3, with access to criminal histories of those mentally ill offenders who are receiving treatment and supervision. Treatment and supervision staff who have access to these criminal histories shall maintain the confidentiality of the information and shall sign a statement to be developed by the Department of Justice which informs them of this obligation.

SEC. 7. Section 2962 of the Penal Code is amended to read:

2962. As a condition of parole, a prisoner who meets the following criteria shall be required to be treated by the State Department of Mental Health, and the State Department of Mental Health shall provide the necessary treatment:

(a) The prisoner has a severe mental disorder that is not in remission or cannot be kept in remission without treatment. The term "severe mental disorder" means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission in the absence of treatment is unlikely. The term "severe mental disorder" as used in this section does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances. The term "remission" means a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support. A person "cannot be kept in remission without treatment" if during the year prior to the question being before the Board of Prison Terms or a trial court, he or she has been in remission and he or she has been physically violent, except in self-defense, or he or she has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, or he or she has intentionally caused property damage, or he or she has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan.

(b) The severe mental disorder was one of the causes of or was an aggravating factor in the commission of a crime for which the prisoner was sentenced to prison.

(c) The prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release.

(d) Prior to release on parole the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of Mental Health have evaluated the prisoner at a facility of the Department of Corrections, and a chief psychiatrist of the Department of Corrections has certified to the Board of Prison

Terms that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior, that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to his or her parole release day, and that the prisoner used force or violence or caused serious bodily injury in committing the crime referred to in subdivision (b). For prisoners being treated by the State Department of Mental Health pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections, and the evaluation shall be done at a state hospital by the person at the state hospital in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections.

If the professionals doing the evaluation do not concur that (1) the prisoner has a severe mental disorder, or (2) that the disorder is not in remission or cannot be kept in remission without treatment, or (3) that the severe mental disorder was a cause of, or aggravated the prisoner's criminal behavior, and a chief psychiatrist has certified the prisoner to the Board of Prison Terms pursuant to this paragraph, then the Board of Prison Terms shall order a further examination by two independent professionals, as provided for in Section 2978. Only if both independent professionals concur with the chief psychiatrist's certification, shall the provisions of this subdivision be applicable to the prisoner. The professionals appointed pursuant to Section 2978 shall inform the prisoner that the purpose of their examination is not treatment but to determine if the prisoner meets the criteria to be involuntarily treated as a mentally disordered offender. It is not required that the prisoner appreciate or understand such information.

(e) The crime referred to in subdivision (b) was a crime in which the prisoner used force or violence, or caused serious bodily injury as defined in paragraph (5) of subdivision (e) of Section 243.

SEC. 8. Section 2966 of the Penal Code is amended to read:

2966. (a) A prisoner may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing if so requested, for the purpose of proving that the prisoner meets the criteria in Section 2962. At the hearing the burden of proof shall be on the person or agency who certified the prisoner under subdivision (d) of Section 2962. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in Section 2978. The prisoner shall be informed at the hearing of his or her right to request a trial pursuant to subdivision (b). The Board of Prison Terms shall provide a prisoner who requests a trial, a petition form and instructions for filing the petition.

(b) A prisoner who disagrees with the determination of the Board of Prison Terms that he or she meets the criteria of Section 2962, may file in the superior court of the county in which he or she is

incarcerated or is being treated a petition for a hearing on whether he or she, as of the date of the Board of Prison Terms hearing, met the criteria of Section 2962. The court shall conduct a hearing on the petition within 60 calendar days after the petition is filed, unless either time is waived by the petitioner or his or her counsel, or good cause is shown. The order of the Board of Prison Terms shall be in effect until the completion of the court proceedings. The court shall advise the petitioner of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the petitioner shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing; however, in order to reduce costs, the rules of criminal discovery, as well as civil discovery, shall be applicable. The standard of proof shall be beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney.

(c) If the Board of Prison Terms continues a parolee's mental health treatment under Section 2962 when they continue the parolee's parole under Section 3001, this section shall be applicable for the purpose of determining whether the parolee meets the criteria of Section 2962.

SEC. 9. Section 2972 of the Penal Code is amended to read:

2972. (a) The court shall conduct a hearing on the petition under Section 2970 for continued treatment. The court shall advise the person of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the person shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing, however, in order to reduce costs the rules of criminal discovery, as well as civil discovery, shall be applicable. The need for continued treatment shall be proven beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney. The trial shall commence no later than 30 calendar days prior to the time the person would otherwise have been released, unless the time is waived by the person or unless good cause is shown.

(b) The people shall be represented by the district attorney. If the person is indigent, the county public defender shall be appointed.

(c) If the court or jury finds that the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment, the court shall order the patient recommitted to the facility in which the patient was confined at the time the petition was filed, or recommitted to the outpatient program in which he or she was being treated at the time the petition was filed, or committed to the State Department of Mental Health if the person was in prison. The commitment shall be for a period of one year from the date of termination of parole or a previous commitment or the scheduled date of release from prison as specified in Section 2970.

(d) A person shall be released on outpatient status if the committing court finds that there is reasonable cause to believe that

the committed person can be safely and effectively treated on an outpatient basis. Except as provided in this subdivision, the provisions of Title 15 (commencing with Section 1600) of Part 2, shall apply to persons placed on outpatient status pursuant to this paragraph. The standard for revocation under Section 1609 shall be that the person cannot be safely and effectively treated on an outpatient basis.

(e) Prior to the termination of a commitment under this section, a petition for recommitment may be filed to determine whether the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment. The recommitment proceeding shall be conducted in accordance with the provisions of this section.

(f) Any commitment under this article places an affirmative obligation on the treatment facility to provide treatment for the underlying causes of the person's mental disorder.

(g) Except as provided in this subdivision, the person committed shall be considered to be an involuntary mental health patient and he or she shall be entitled to those rights set forth in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code. Commencing January 1, 1986, the State Department of Mental Health may adopt regulations to modify those rights as is necessary in order to provide for the reasonable security of the inpatient facility in which the patient is being held. This subdivision and the regulations adopted pursuant thereto shall become operative on January 1, 1987, except that regulations may be adopted prior to that date.

SEC. 10. Section 2978 of the Penal Code is amended to read:

2978. (a) Any independent professionals appointed by the Board of Prison Terms for purposes of this article shall not be state government employees; shall have at least five years of experience in the diagnosis and treatment of mental disorders; and shall include psychiatrists, and licensed psychologists who have a doctoral degree in psychology.

(b) On July 1 of each year the Department of Corrections and the State Department of Mental Health shall submit to the Board of Prison Terms a list of 20 or more independent professionals on which both departments concur. The professionals shall not be state government employees and shall have at least five years of experience in the diagnosis and treatment of mental disorders and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. For purposes of this article, when the Board of Prison Terms receives the list, they shall only appoint independent professionals from the list. The list shall not be binding on the Board of Prison Terms until they have received it, and shall not be binding after June 30 following receipt of the list.

SEC. 11. Section 2981 is added to the Penal Code, to read:

2981. For the purpose of proving the fact that a prisoner has received 90 days or more of treatment within the year prior to the prisoner's parole or release, the records or copies of records of any

state penitentiary, county jail, federal penitentiary, or state hospital in which that person has been confined, when the records or copies thereof have been certified by the official custodian of those records, may be admitted as evidence.

CHAPTER 688

An act to amend Sections 6140, 6140.1, and 6140.3 of, and to add Section 6032 to, the Business and Professions Code, relating to the State Bar of California.

[Approved by Governor September 16, 1987 Filed with Secretary of State September 17, 1987]

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

SECTION 1. Section 6032 is added to the Business and Professions Code, to read:

6032. Subject to the approval of the Committees on Judiciary of each house of the Legislature, the board shall contract with an independent expert for the purpose of conducting a comprehensive study of the State Bar's affirmative action program with regard to its employees. A final report shall be submitted to each of the Committees on Judiciary no later than September 1, 1988. The amount expended pursuant to the contract shall not exceed twenty-five thousand dollars ($25,000).

SEC. 2. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual membership fee for 1988 as follows:

(1) For active members who have been admitted to the practice of law in this state for three years or longer preceding the first day of February of the year for which the fee is payable, at the sum of two hundred fifteen dollars ($215).

(2) For active members who have been admitted to the practice of law in this state for less than three years but more than one year preceding the first day of February of the year for which the fee is payable, at the sum of one hundred forty-seven dollars ($147).

(3) For active members who have been admitted to the practice of law in this state during, or for less than one year preceding the first day of February of, the year for which the fee is payable, at a sum not exceeding one hundred sixteen dollars ($116).

(b) 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, 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 6140.1 of the Business and Professions Code is

amended to read:

6140.1. The State Bar annually shall submit its proposed baseline budget for the following fiscal year to the appropriate fiscal committees of the Legislature and the Joint Legislative Budget Committee by November 15, and its proposed final budget by February 15, so that the budget can be reviewed and approved in conjunction with any bill that would authorize the imposition of membership dues. Each proposed budget shall include the estimated revenues, expenditures, and staffing levels for all of the programs and funds administered by the State Bar.

The State Bar shall submit the budget documents in a form comparable to the documents prepared by state departments for inclusion in the Governor's Budget and the salaries and wages supplement. In addition, the bar shall provide supplementary schedules detailing operating expenses and equipment, all revenue sources, any reimbursements or interfund transfers, fund balances, and other related supporting documentation. The bar shall submit budget change proposals with its final budget, explaining the need for any differences between the current and proposed budgets.

The State Bar shall not reduce the funding for its discipline programs in 1988 below the levels proposed in its proposed budget submitted to the Legislature on June 26, 1987.

SEC. 4. Section 6140.3 of the Business and Professions Code is amended to read:

6140.3. (a) The board may increase the annual membership fee fixed by subdivision (a) of Section 6140 and the annual membership fee specified in Section 6141 by an additional amount not exceeding ten dollars ($10). This additional amount may be used only for (1) the costs of financing and constructing a facility in Los Angeles to house State Bar staff and (2) any major capital improvement projects related to facilities owned by the bar.

(b) At least 30 days prior to entering into any agreement for the construction of a facility in Los Angeles, the State Bar shall submit its preliminary plan and cost estimate for the facility to the Judiciary Committees of the Legislature for review. The documents submitted shall include an analysis demonstrating that the total costs of financing and constructing the facility can be supported by the revenues authorized by this section.

CHAPTER 689

An act to amend, repeal, and add Section 21101.6 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 16, 1987 Filed with Secretary of State September 17, 1987.]

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

SECTION 1. The Legislature finds and declares that unrestricted vehicular traffic on urban streets of extremely steep grades and access streets on approaches to those steep streets creates hazards which are detrimental to the health, safety, and welfare of residents, pedestrians, and persons driving in the area.

SEC. 2. Section 21101.6 of the Vehicle Code is amended to read:

21101.6. Notwithstanding Section 21101, local authorities may not place gates or other selective devices on any street which deny or restrict the access of certain members of the public to the street, while permitting others unrestricted access to the street.

However, a city and county may, after a public hearing, limit vehicular access to any street, or portion thereof, to residents of abutting properties, persons having business on that street or portion thereof, and emergency vehicles if the physical configuration of the street, or portion thereof, is found to be unsafe for the unrestricted flow of traffic and the affected portion of the street has a grade averaging not less than 20 percent over a distance of not less than two blocks.

This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1990, deletes or extends that date.

SEC. 3. Section 21101.6 is added to the Vehicle Code, to read:

21101.6. Notwithstanding Section 21101, local authorities may not place gates or other selective devices on any street which deny or restrict the access of certain members of the public to the street, while permitting others unrestricted access to the street.

This section is not intended to make a change in the existing law, but is intended to codify the decision of the Court of Appeal in City of Lafayette v. County of Contra Costa (91 Cal. App. 3d 749).

This section shall become operative on January 1, 1990.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 690

An act to amend and repeal Section 933 of the Penal Code, relating to grand juries.

[Approved by Governor September 16, 1987 Filed with Secretary of State September 17, 1987.]

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

SECTION 1. Section 933 of the Penal Code, as amended by Section 1 of Chapter 221 of the Statutes of 1985, 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 pertaining to matters under the control of the governing body, and every elective county officer shall comment on the findings and recommendations pertaining to matters under the control of that county officer. In any city and county, the mayor shall also 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 the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices.

SEC. 2. Section 933 of the Penal Code, as amended by Section 2 of Chapter 221 of the Statutes of 1985, is repealed.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 691

An act to add Section 3981 to the Health and Safety Code, relating to restrooms.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 17, 1987.]

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

SECTION 1. The purpose of this legislation is to end the inequitable delays which women face when they need to use restroom facilities in public places when men are rarely required to wait for the same purpose.

SEC. 2. Section 3981 is added to the Health and Safety Code, to read:

3981. (a) Publicly and privately owned facilities where the public congregates shall be equipped with sufficient temporary or permanent restrooms to meet the needs of the public at peak hours.

(b) In conformity with the State Plumbing Code, and except as otherwise provided in this section, standards shall be adopted in order to enforce this section, as follows:

(1) The State Building Standards Commission shall adopt standards with respect to all state-owned or state-occupied facilities where the public congregates and over which it has jurisdiction pursuant to Section 18934.5.

(2) The Office of the State Architect shall adopt standards with respect to all facilities where the public congregates and which are not covered by paragraph (1), unless exempt from coverage pursuant to this section.

(c) The standards adopted pursuant to subdivision (b) shall be published in the State Building Standards Code contained in Title 24 of the California Administrative Code.

(d) This section shall apply to facilities where the public congregates which commence construction, or which undertake structural alterations, repairs, or improvements exceeding 50 percent of the entire facility, on or after January 1, 1989.

(e) For the purposes of this section, "facilities where the public congregates" means sports and entertainment arenas, stadiums, community and convention halls, specialty event centers, amusement facilities, and ski resorts.

For purposes of this section, "facilities where the public congregates" also means specialty event centers in public parks.

(f) This section shall not apply to the following:

(1) Any hotel. For purposes of this section, "hotel" means an establishment in which there exists the relationship of guests and innkeeper between the occupants and the owner or operator of the establishment. The existence of some other legal relationship between the occupants and owner or operator shall be immaterial.

(2) Any restaurant or food facility, as defined in Section 27521.

(3) Any public or private elementary or secondary school facility.

(4) Any qualified historic building, defined as qualifying under provisions in the State Historical Building Code contained in Part 8 (commencing with Section 8-100) of Title 24 of the California Administrative Code.

(g) It is the intent of the Legislature that, in order to ensure that standards are both viable and efficacious, the Office of the State Architect and the State Building Standards Commission hold a series of public meetings with representatives of affected industries and state and local agencies prior to adopting standards under this section.

CHAPTER 692

An act to amend Sections 11891.5, 11908.1, 11909, 11910, 12055, and 12102 of, and to add Sections 11886.1, 11887.1, 11887.2, 11891.6, 11892.1, 11908.2, 12102.1, and 12751.1 of, and to add and repeal Section 13391.1 of, to, the Public Utilities Code, relating to municipal utility districts.

[Approved by Governor September 16, 1987 Filed with Secretary of State September 17, 1987]

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

SECTION 1. Section 11886.1 is added to the Public Utilities Code, to read:

11886.1. The board of a district which has owned and operated an electric distribution system for at least eight years and has a population of 250,000 or more may delegate to the general manager the authority to take any or all of the actions provided for in Section 11886.

SEC. 2. Section 11887.1 is added to the Public Utilities Code, to read:

11887.1. The board of a district which has owned and operated an electric distribution system for at least eight years and has a population of 250,000 or more may, notwithstanding Section 11887, determine that additional positions requiring peculiar and exceptional qualifications, including, but not limited to, those of a scientific, professional, or expert character or of special confidence, or positions with significant managerial responsibility, shall be exempt from the district civil service if the total number of these exempt positions, including the exempt positions filled pursuant to Section 11887, does not exceed 2 percent of the total civil service positions of the district. However, the board may not determine any position to be exempt as long as that position is filled by an employee appointed pursuant to the district civil service.

SEC. 3. Section 11887.2 is added to the Public Utilities Code, to read:

11887.2. The board of a district which has owned and operated an electric distribution system for at least eight years and has a population of 250,000 or more may, notwithstanding any other provision of this division, appoint or remove only those officers or employees who are exempt from the district civil service and who either report directly to the board or report to another officer who reports directly to the board. All other officers and employees exempt from the district civil service shall be appointed by, and serve at the pleasure of, the general manager.

The board may contract for the services of any officer who reports directly to the board or who reports to an officer who reports directly to the board and may authorize the general manager to contract for the services of other officers and exempt employees. The term of these contracts may not exceed five years in duration.

SEC. 4. Section 11891.5 of the Public Utilities Code is amended to read:

11891.5. The board of any district which has owned and operated a water distribution system for at least 10 years and which maintains a system of accounting substantially in accordance with the Uniform System of Accounts for Water Utilities prescribed by the Public Utilities Commission may provide, by resolution, under the terms and conditions as it sees fit, for the payment, without prior specific approval by the board, of demands against the district which relate to obligations incurred for purposes and within the amounts specified for those purposes in a projection of the district's operations for a period of not longer than one year, if the demands are approved by the general manager. The projection shall be expressed in terms of the major groups of accounts in the uniform system of accounts and shall be incorporated in the resolution.

SEC. 5. Section 11891.6 is added to the Public Utilities Code, to read:

11891.6. The board of a district which has owned and operated an electric distribution system for at least eight years and has a population of 250,000 or more which maintains a system of accounting substantially in accordance with the Uniform System of Accounts for Electrical Corporations prescribed by the Public Utilities Commission, or any other generally accepted accounting system, may provide, by resolution, under the terms and conditions as it sees fit, for the payment, without prior specific approval by the board, of demands against the district which relate to obligations incurred for purposes and within the amounts specified for those purposes in a projection of the district's operations for a period of not longer than one year, if the demands are approved by the general manager. The projection shall be expressed in terms of the major groups of accounts in the system of accounts and shall be incorporated in the resolution.

SEC. 6. Section 11892.1 is added to the Public Utilities Code, to

read:

11892.1. Notwithstanding Section 11892, the board of a district which has owned and operated an electric distribution system for at least eight years and has a population of 250,000 or more may, to facilitate the business of the district, provide for the creation and administration of revolving funds as the needs of the district may require. The aggregate amount of the revolving funds shall not exceed two hundred thousand dollars ($200,000). The revolving funds shall be disbursed in accordance with the rules adopted by the board, and all payments from any revolving fund shall be reported to the board and vouchers filed therefor.

SEC. 7. Section 11908.1 of the Public Utilities Code is amended to read:

11908.1. (a) Notwithstanding Section 11908, a district with a board having seven directors may provide, by resolution or ordinance, that each director shall receive compensation in an amount not to exceed one hundred dollars ($100) per day for each day's attendance at public meetings of the board or for each day's service rendered as a director by request of the board, not exceeding a total of six days in any calendar month, or, in lieu of that compensation, a salary of not to exceed six hundred dollars ($600) per month subject to annual adjustments pursuant to subdivision (b), together with any expenses incurred in the performance of his or her duties required or authorized by the board. No resolution or ordinance establishing compensation pursuant to this subdivision shall provide for any automatic increase in that compensation.

(b) Any district which adopts salaries for directors pursuant to subdivision (a) may increase those salaries by not more than 5 percent for each calendar year following the operative date of the last adjustment, commencing with the calendar year following adoption of the salary or increase.

SEC. 8. Section 11908.2 is added to the Public Utilities Code, to read:

11908.2. Notwithstanding Section 11908, the board of a district which has owned and operated an electric distribution system for at least eight years and has a population of 250,000 or more may provide, by ordinance or resolution, that each director shall receive compensation in an amount not to exceed one hundred dollars ($100) per day for each day's attendance at public meetings of the board or for each day's service rendered as a director by request of the board, not exceeding a total of 10 days in any calendar month, together with any expenses incurred in the performance of his or her duties required or authorized by the board. The board may, by resolution or ordinance, increase the compensation per day by not more than 5 percent for each calendar year following the operative date of the last adjustment, commencing with the 1988 calendar year. No resolution or ordinance establishing compensation pursuant to this subdivision shall provide for any automatic increase in that compensation.

SEC. 9. Section 11909 of the Public Utilities Code is amended to read:

11909. The acts of the board shall be expressed by motion, resolution, or ordinance. No ordinance, resolution, or motion shall have any validity or effect unless passed by the affirmative votes of at least three directors of a five-ward district, or at least four directors of a seven-ward district.

SEC. 10. Section 11910 of the Public Utilities Code is amended to read:

11910. No ordinance shall be passed by the board within three days of the day of its introduction or at any time other than a regular or adjourned regular meeting. All ordinances shall be published after passage.

SEC. 10.5. Section 12055 of the Public Utilities Code is amended to read:

12055. The "district civil service" includes every employee of the district except all of the following:

(a) Officers elected by the people.

(b) Officers, assistant officers, and other persons and employees appointed by the board of directors.

(c) Temporary construction employees.

(d) Part-time employees.

(e) The unfilled positions (not to exceed 15) requiring peculiar and exceptional qualifications, including those of a scientific, professional, or expert character or of special confidence, as may be exempted from "district civil service" upon the recommendation of the general manager approved by the board.

(f) Limited-term employees appointed for a period not to exceed two years. Limited-term appointments may be extended for an additional period not to exceed two years upon approval of the general manager.

(g) Employees occupying positions determined to be exempt from the district civil service pursuant to Section 11887.1.

SEC. 12. Section 12102 of the Public Utilities Code is amended to read:

12102. (a) When no list of eligibles is available for a position in the class requisitioned by the department or division head, the general manager may make a noncivil service appointment thereto for a period of not exceeding six months and only until a regular appointment can be made, but no person shall be compensated under a noncivil service appointment, or appointments, for a period exceeding six months in any fiscal or calendar year, and no office or employment may be filled by a noncivil service appointment for more than six months in the aggregate in one fiscal or calendar year.

(b) This section does not apply to a district which has owned or operated an electric distribution system for at least eight years and has a population of 250,000 or more.

SEC. 13. Section 12102.1 is added to the Public Utilities Code, to read:

12102.1. When no list of eligibles is available for a position in the class requisitioned by the department or division head, the general manager of a district which has owned and operated an electric distribution system for at least eight years and has a population of 250,000 or more may make a noncivil service appointment thereto for a period of not exceeding 12 months and only until a regular appointment can be made.

SEC. 14. Section 12751.1 is added to the Public Utilities Code, to read:

12751.1. Notwithstanding Section 12751, the board of a district which has owned and operated an electric distribution system for at least eight years and has a population of 250,000 or more may authorize the general manager to determine the lowest responsible bidder and to award a contract to that bidder.

SEC. 15. Section 13391.1 is added to the Public Utilities Code, to read:

13391.1. Notwithstanding Section 13391, a district which has owned and operated an electric distribution system for at least eight years and has a population of 250,000 or more may borrow money and incur indebtedness for the purchasing of electricity if the maximum principal amount of indebtedness outstanding under this article does not at any time exceed seventy-five million dollars ($75,000,000) and the maximum term does not exceed one year.

This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute chaptered prior to that date deletes or extends that date.

CHAPTER 693

An act to amend Section 6755.1 of the Business and Professions Code, relating to professional and civil engineers.

[Approved by Governor September 16, 1987 Filed with Secretary of State September 17, 1987.]

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

SECTION 1. Section 6755.1 of the Business and Professions Code is amended to read:

6755.1. The second division of the examination for registration as a professional engineer shall include questions to test the applicant's knowledge of state laws and the board's rules and regulations. On and after April 1, 1988, the second division of the examination for registration as a civil engineer shall also include questions to test the applicant's knowledge of seismic principles and engineering surveying principles as defined in Section 6731.1. No registration for a civil engineer shall be issued by the board on or after January 1, 1988, to any applicant unless he or she has successfully completed

questions to test his or her knowledge of seismic principles and engineering surveying principles.

The board shall administer the questions to test the applicant's knowledge of seismic principles and engineering surveying principles as a separate part of the second division of the examination for registration as a civil engineer.

It is the intent of the Legislature that this section confirm the authority of the board to issue registrations prior to April 1, 1988, to applicants based on examinations not testing the applicant's knowledge of seismic principles and engineering surveying principles as defined in Section 6731.1.

CHAPTER 694

An act to add Sections 25307.5 and 25308.5 to the Public Resources Code, relating to energy resources.

[Approved by Governor September 16, 1987 Filed with Secretary of State September 17, 1987.]

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

SECTION 1. Section 25307.5 is added to the Public Resources Code, to read:

25307.5. In conducting hearings in the development of its draft, draft final, and final electricity reports prepared under this chapter, the commission shall use all of the following procedures:

(a) The commission shall establish a schedule for hearing matters relating to electricity report issues, including a schedule for the submission of reports and testimony by the commission staff, electric utilities, and intervenors, and rebuttal witnesses for those parties. The schedule shall provide for at least 14 days between the mailing of all submittals and the conducting of any hearing thereon. The schedule may be amended from time to time by the commission or the committee presiding over the adoption of the electricity report if the amended schedule provides adequate time for parties to review reports and testimony.

(b) The schedule shall provide all of the following:

(1) One or more prehearing conferences for the purpose of permitting parties to identify factual issues involved in creating a sufficient foundation for the electricity report.

(2) A hearing order identifying the factual issues that will be considered in hearings to develop a record supporting the electricity report.

(3) One or more quasi-legislative evidentiary hearings to form a record for the commission's decisions on the factual issues which it determines are necessary to form the factual foundation for the electricity report, during which all testimony shall be given under

oath and subject to reasonable cross examination. Where testimony is provided that involves the opinion of an expert, the witness shall, in the testimony, establish his or her qualifications with respect to the matters submitted. The commission shall also provide an opportunity for public comment on the policy choices and recommendations in the electricity report at one or more nonevidentiary hearings prior to adoption of the final report.

(c) All documentation developed by or submitted to the commission in support of reports or testimony shall be made available to interested parties within 10 days of a request therefor.

(d) The office of the public adviser shall facilitate adherence to the schedule and the participation of interested parties at all hearings.

(e) A written trancript of all the hearings shall be made and copies shall be made available within three days of receipt of the transcription by the commission.

Upon request of any party who indicates his or her willingness to pay the added cost of obtaining an expedited transcript, the commission shall direct the reporter to provide an official transcript on an expedited basis.

(f) At the request of any party in the proceedings, all applicable laws and regulations, both federal and state, and relevant Public Utilities Commission decisions, shall be incorporated by reference into the hearing record in accordance with the rules of official notice.

The commission may, by regulation or order, adopt further procedures, consistent with this section, for the adoption of the electricity report. The adoption of the electricity report shall be governed by the procedures specified in this section, and any additional procedures adopted by the commission, and shall not be governed by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 25308.5 is added to the Public Resources Code, to read:

25308.5. (a) In developing the electricity report, the commission shall, after providing an opportunity for parties to submit recommendations, establish criteria for determining demand conformance for the siting of facilities.

(b) In issuing the final electricity report, the commission shall describe how the hearing record supports its policy decisions, including, but not limited to, the demand and supply forecasts and the demand conformance criteria.

SEC. 3. It is not the intention of the Legislature, in amending Section 25307.5 of the Public Resources Code in Section 1 of this act, to raise any implication that Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code applies to any electricity report adopted before January 1, 1988.

CHAPTER 695

An act to add Section 321.6 to the Public Utilities Code, relating to public utilites.

[Approved by Governor September 16, 1987 Filed with Secretary of State September 17, 1987]

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

SECTION 1. Section 321.6 is added to the Public Utilities Code, to read:

321.6. The commission shall develop, publish, and annually update an annual work plan access guide which describes in clear detail the scheduled ratemaking proceedings and other decisions that may be considered by the commission during the calendar year. The guide shall include information on how members of the public and ratepayers can gain access to the commission's ratemaking process and information regarding the specific matters to be decided. It shall also include information on the operation of the office of the public advisor and identify the names and telephone numbers of those contact persons responsible for specific cases and matters to be decided. The commission shall develop a program to disseminate the information in the guide utilizing computer mailing lists to provide regular updates on the information to those members of the public and organizations which request that information. The annual work plan access guide shall be transmitted to the Legislature between January 15 and February 1 of each year.

CHAPTER 696

An act to add Chapter 13.1 (commencing with Section 54994.1) to Part 1 of Division 2 of Title 5 of the Government Code, relating to meetings.

[Approved by Governor September 16, 1987 Filed with Secretary of State September 17, 1987]

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

SECTION 1. Chapter 13.1 (commencing with Section 54994.1) is added to Part 1 of Division 2 of Title 5 of the Government Code, to read:

CHAPTER 13.1. FEES NOT GOVERNED BY SPECIFIC NOTICE REQUIREMENTS

54994.1. (a) Prior to adopting an ordinance, resolution, or other

legislative enactment adopting a new fee or approving an increase in an existing fee to which this chapter applies, a local agency shall hold a public hearing, 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, shall be published in accordance with Section 6062a.

(b) Any costs incurred by a local agency in conducting the hearing required pursuant to subdivision (a) may be recovered as part of the fees which were the subject of the hearing.

54994.2. This chapter applies only to the adopting or increasing of fees to which a specific statutory notice requirement, other than Section 54954.2, does not apply.

54994.2. As used in this chapter:

(a) "Fees" do not include rates or charges for water, sewer, or electrical service.

(b) "Local agency" has the same meaning as provided in Section 54994.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution to the extent that 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.

Moreover, no reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for other costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law for those other costs.

CHAPTER 697

An act to add Section 8477.3 to the Education Code, relating to child care, and making an appropriation therefor.

[Approved by Governor September 16, 1987 Filed with Secretary of State September 17, 1987]

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

SECTION 1. Section 8477.3 is added to the Education Code, to read:

8477.3. Notwithstanding any other provision of law, the State Allocation Board may authorize the expenditure of any moneys in the State Child Care Facilities Fund to reimburse any public, nonprofit joint powers agency that was formed during the 1984

calendar year for costs incurred after January 1, 1986, for the installation of initial utility services in any relocatable child care and development facility acquired with funds not including state funds.

CHAPTER 698

An act to amend the heading of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of, and Sections 4525, 4526, 4527, and 4528 of, and to add Section 4529.5 to, the Government Code, relating to public contracts.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 17, 1987.]

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

SECTION 1. The heading of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code is amended to read:

CHAPTER 10. CONTRACTS WITH PRIVATE ARCHITECTS, ENGINEERING, LAND SURVEYING, AND CONSTRUCTION PROJECT MANAGEMENT FIRMS

SEC. 2. Section 4525 of the Government Code is amended to read:

4525. For purposes of this chapter, the following terms have the following meanings:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, engineering, land surveying, or construction project management.

(b) "Agency head" means the secretary, administrator, or head of a department, agency, or bureau of the State of California authorized under the State Contract Act to contract for architectural, engineering, land surveying, and construction project management services.

(c) "Architectural, engineering, and land surveying services" includes those professional services of an architectural, engineering, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(d) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects.

SEC. 3. Section 4526 of the Government Code is amended to

read:

4526. Notwithstanding any other provision of law, it shall be considered to be the public policy of the State of California and any political subdivision thereof that selecting by an agency head for professional services of private architect, engineering, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Agency heads contracting for private architectural, professional engineering, land surveying, and construction project management services shall adopt by regulation procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public agencies. Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837.

SEC. 4. Section 4527 of the Government Code is amended to read:

4527. In the procurement of architectural, engineering, land surveying, and construction project management services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

Statewide announcement of all projects requiring architectural, engineering, land surveying, or construction project management services shall be made by the agency head through publications of the respective professional societies. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him or her, no less than three of the firms deemed to be the most highly qualified to provide the services required.

SEC. 5. Section 4528 of the Government Code is amended to read:

4528. (a) The agency head shall negotiate a contract with the best qualified firm for architectural, engineering, land surveying, and construction project management services at compensation which the agency head determines is fair and reasonable to the State of California or the political subdivision involved.

(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the agency head determines to be fair and reasonable to the State of California or the political subdivision involved, negotiations with that

firm shall be formally terminated. The agency head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head shall terminate negotiations. The agency head shall then undertake negotiations with the third most qualified firm.

(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, the agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this chapter until an agreement is reached.

SEC. 6. Section 4529.5 is added to the Government Code, to read:

4529.5. Any individual or firm proposing to provide construction project management services pursuant to this chapter shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

CHAPTER 699

An act to repeal Section 1922.12 of the Civil Code, relating to real property.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 17, 1987]

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

SECTION 1. Section 1922.12 of the Civil Code, as added by Chapter 372 of the Statutes of 1986, is repealed.

CHAPTER 700

An act to amend Sections 12027, 12071, and 12072 of, and to add and repeal Section 12026.2 of, the Penal Code, relating to crime.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 17, 1987]

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

SECTION 1. Section 12026.2 is added to the Penal Code, to read:

12026.2. (a) Section 12025 does not apply to or affect any of the following:

(1) The possession of a firearm by an authorized participant in a

motion picture, television, or video production or entertainment event when the participant lawfully uses the firearm as part of that production or event or while going directly to or directly from that production or event.

(2) The possession of a firearm in a locked container by a member of any club or organization organized for the purpose of lawfully collecting and lawfully displaying pistols, revolvers or other firearms, while the member is at meetings of the clubs or organizations or while going directly to and coming directly from those meetings.

(3) The transportation of a firearm by a participant when going directly to or coming directly from a recognized safety or hunter safety class, or a recognized sporting event involving that firearm.

(4) The transportation of a firearm by a person mentioned in Section 12026, directly between the places mentioned in Section 12026.

(5) The transportation of a firearm by a person when going directly to or coming directly from a fixed place of business or private residential property for the purpose of the lawful repair or the lawful transfer of that firearm.

(6) The transportation of a firearm by a person listed in Section 12026 when going directly from the place where that person lawfully received that firearm to that person's place of residence or place of business.

(7) The transportation of a firearm by a person when going directly to or coming directly from a gun show, swap meet, or similar event to which the public is invited, for the purposes of displaying that firearm in a lawful manner.

(8) The transportation of a firearm by an authorized employee or agent of a supplier of firearms when going directly to or coming directly from a motion picture, television, or video production or entertainment event for the purpose of providing that firearm to an authorized participant to lawfully use as a part of that production or event.

(b) In order for a firearm to be exempted under subdivision (a), while being transported to or from a place, the firearm shall be unloaded, kept in a locked container, as defined in subdivision (d), and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

(c) This section does not prohibit or limit the otherwise lawful carrying or transportation of any pistol, revolver, or other firearm capable of being concealed upon the person in accordance with this chapter.

(d) As used in this section, "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

This section shall remain in effect only until January 1, 1991, and

as of that date is repealed.

SEC. 2. Section 12027 of the Penal Code is amended to read:

12027. Section 12025 does not apply to or affect any of the following:

(a) Peace officers listed in Section 830.1 or 830.2 whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, 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 he or she is actually engaged in assisting the officer.

The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at anytime subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a weapon as provided in this subdivision.

A retired peace officer who retired after January 1, 1981, shall petition the issuing agency for renewal of his or her privilege to carry a concealed firearm every five years. Any peace officer who has been honorably retired shall be issued an identification certificate, which shall give the retired officer the privilege to carry a weapon pursuant to this subdivision when the issuing agency has endorsed the certificate indicating that the privilege exists. Where the officer retired after January 1, 1981, the endorsement shall specify the date when the endorsement is to be renewed again. A retired peace officer shall have no privilege to carry a weapon pursuant to this subdivision in the absence of the endorsement.

An honorably retired peace officer listed in subdivision (c) of Section 830.5 authorized to carry firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a firearm.

(b) The possession or transportation of unloaded firearms as merchandise by a person engaged in the business of manufacturing, repairing, or dealing in firearms who is licensed to engage in that business or the authorized representative or authorized agent of that person while engaged in the lawful course of the business.

(c) Members of the Army, Navy, or Marine Corps of the United States, or the National Guard, when on duty, or organizations which are by law authorized to purchase or receive such weapons from the United States or this state.

(d) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their respective organizations.

(e) 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.

(f) Members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while such members are using any of the firearms referred to in this chapter upon such target ranges, or while going to and from such ranges.

(g) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from such hunting or fishing expedition.

(h) Transportation of unloaded firearms by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.

SEC. 3. Section 12027 of the Penal Code is amended to read:

12027. Section 12025 does not apply to or affect any of the following:

(a) (1) Any peace officer, listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, 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 of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the agency the officer retired from.

Any officer retired after January 1, 1981, shall have an endorsement on the identification stating that the issuing agency approves the officer's carrying of a firearm. The endorsement shall also include the date when the endorsement is to be renewed.

(2) A retired peace officer who retired after January 1, 1981, shall petition the issuing agency for the renewal of his or her privilege to carry a concealed firearm every five years. An honorably retired peace officer, described in paragraph (1), retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of that peace officer, or at any time subsequent thereto, deny or revoke, for good cause the retired officer's privilege to carry a firearm.

(3) An honorably retired peace officer listed in subdivision (c) of Section 830.5 authorized to carry firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency

from which the officer has retired.

(b) The possession or transportation of unloaded firearms as merchandise by a person engaged in the business of manufacturing, repairing, or dealing in firearms who is licensed to engage in that business or the authorized representative or authorized agent of that person while engaged in the lawful course of the business.

(c) Members of the Army, Navy, or Marine Corps of the United States, or the National Guard, when on duty, or organizations which are by law authorized to purchase or receive such weapons from the United States or this state.

(d) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their respective organizations.

(e) 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.

(f) Members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while such members are using any of the firearms referred to in this chapter upon such target ranges, or while going to and from such ranges.

(g) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from such hunting or fishing expedition.

(h) Transportation of unloaded firearms by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.

(i) Upon approval of the sheriff of the county in which they reside, honorably retired federal officers or agents of the Federal Bureau of Investigation, the Secret Service, the United States Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, and the Drug Enforcement Administration who were assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

Retired federal officers or agents shall carry identification indicating their retired federal status and shall provide the sheriff with certification from the agency from which they retired certifying their service in the state, the nature of their retirement, and indicating the agency's concurrence that the retired federal officer or agent should be accorded the privilege of carrying a concealed firearm.

The sheriff of the county in which the retired federal officer or agent resides may require recertification prior to a permit renewal, and may suspend the privilege for cause. The sheriff may charge a fee necessary to cover any reasonable expenses incurred by the county.

SEC. 4. Section 12071 of the Penal Code is amended to read:

12071. (a) The duly constituted licensing authorities of any city,

county, or city and county shall accept applications for, and may grant licenses permitting the licensee to sell at retail within the city, county, or city and county, pistols, revolvers, and other firearms capable of being concealed upon the person. If a license is granted, it shall be in the form prescribed by the Attorney General, effective for not more than one year from the date of issue, and be subject to the following conditions, for breach of any of which the license shall be subject to forfeiture.

(1) The business shall be carried on only in the building designated in the license.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No pistol or revolver shall be delivered:

(A) Within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser either is personally known to the seller or shall present clear evidence of his or her identity.

(D) Whenever the dealer is notified by the Department of Justice that a purchaser is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(b) As used in this article, "clear evidence of his or her identity" includes, but is not limited to, a motor vehicle operator's license, a state identification card, an armed forces identification card, an employment identification card which contains the bearer's signature and photograph, or any similar documentation which provides the seller reasonable assurance of the identity of the purchaser.

SEC. 5. Section 12072 of the Penal Code is amended to read:

12072. No person, corporation or dealer shall sell, deliver, or otherwise transfer any pistol, revolver, or other firearm capable of being concealed upon the person to any person whom he or she has cause to believe to be within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from owning or possessing these firearms, nor shall any dealer sell, deliver or transfer any firearm capable of being concealed upon the person, to any person under the age of 21 years. In no event shall any of these firearms be delivered to the purchaser

within 15 days of the application for the purchase thereof, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later and when delivered the firearm shall be either securely wrapped or in a locked container and shall be unloaded. Where neither party to the transaction holds a dealer's license, no person shall sell or otherwise transfer any such firearm to any other person within this state who is not personally known to the vendor. Any violation of the provisions of this section is a misdemeanor.

SEC. 6. Section 3 of this bill incorporates amendments to Section 12027 of the Penal Code proposed by both this bill and AB 2559. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 12027 of the Penal Code, and (3) this bill is enacted after AB 2559, in which case Section 2 of this bill shall not become operative.

CHAPTER 701

An act to amend Section 5134 of the Business and Professions Code, relating to accountancy, and making an appropriation therefor.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 17, 1987.]

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

SECTION 1. Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee for the certified public accountant examination shall be fixed by the board at not more than one hundred dollars ($100). Should the applicant fail to pass the required examination, reexamination at subsequent examinations will be given the same applicant for an additional fee fixed by the board at not more than twenty dollars ($20) for each subject for which the applicant is scheduled.

(b) The application fee for issuance of a certified public accountant certificate shall be fixed by the board at not more than one hundred dollars ($100).

(c) The application fee for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at not more than one hundred dollars ($100).

(d) The registration fee shall be fixed by the board at not more than fifty dollars ($50).

(e) The biennial renewal fee shall be fixed by the board at not

more than one hundred dollars ($100).

(f) The delinquency fee shall be 50 percent of the accrued renewal fee.

(g) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued less than one year before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal in effect on the last regular renewal date before the date on which the permit is issued.

The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(h) The fee for proctoring examinations for out-of-state candidates shall be fixed by the board at not more than seventy-five dollars ($75).

(i) The fee for filing of sponsor agreements for continuing education courses shall be fixed by the board at not more than one hundred dollars ($100). Universities, colleges, or other four-year institutions of learning accredited by a regional or national accrediting agency or association included in a list of such agencies or associations published by the United States Commissioner of Education under the requirements of Section 253 of the Veteran's Readjustment Assistance Act of 1952, known as Public Law 550 of the 82nd Congress, as amended, are exempted from the payment of this filing fee.

CHAPTER 702

An act to amend Sections 7850, 7852, 7852.3, 7860, 7861, 7862, 7925, and 8233.5 of, to add Section 8664.2 to, and to repeal Section 7861.6 of, the Fish and Game Code, relating to commercial fishing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 7850 of the Fish and Game Code is amended to read:

7850. (a) Excepting persons expressly exempted under this code, no person shall use or operate, or assist in using or operating, any boat, net, trap, line, or other appliance to take fish or amphibia for commercial purposes, and no person shall be on board a vessel on which fish or amphibia are taken for commercial purposes while those fish are being taken or transported or bring ashore, or to cause to be brought ashore, any fish or amphibia at any point in the state

for the purpose of selling them in a fresh state, unless the person holds a commercial fishing license issued by the department.

(b) As used in this section, "person" does not include persons who are less than 14 years of age a partnership, corporation, or association. Any person, partnership, corporation, or association may pay the fees for a license issued to any person.

(c) This article does not apply to the taking, transporting, or selling of live fresh-water fish for bait by the holder of a live fresh-water bait fish license issued pursuant to Section 8460.

SEC. 2. Section 7852 of the Fish and Game Code is amended to read:

7852. (a) A commercial fishing license is valid from April 1st to March 31st of the year following, or, if issued after the beginning of that term, for the remainder thereof.

(b) Except as provided in subdivision (a) of Section 7852.3, the department shall issue a commercial fishing license for a fee of fifty dollars ($50).

(c) The commercial fishing license shall be in the licensee's possession, or immediately available to the licensee, at all times when engaged in any activity described in Section 7850 or Article 7 (commencing with Section 8030) of Chapter 1 of Part 3 of Division 6 for which a commercial fishing license is required.

SEC. 3. Section 7852.3 of the Fish and Game Code is amended to read:

7852.3. (a) The department shall issue a commercial fishing license to a person who is 14 years of age or more but less than 18 years of age who is actively assisting in fishing activities for a fee of one-half of the fee prescribed in subdivision (b) of Section 7852.

(b) The department shall issue a commercial fishing salmon stamp to a person who is 14 years of age or more but less than 18 years of age for one-half of the fee prescribed in subdivision (c) of Section 7860.

(c) Nothing in this section affects other provisions of law relating to employment of minors.

SEC. 4. Section 7860 of the Fish and Game Code is amended to read:

7860. (a) Except as provided in subdivision (f), no person who is 14 years of age or more and less than 70 years of age, on or before April 1 of the current license year, shall take salmon for commercial purposes or be on board a vessel on which salmon are taken for commercial purposes while salmon are being taken or transported unless that person has a commercial fishing salmon stamp issued pursuant to this section affixed to his or her commercial fishing license.

(b) Except as provided in subdivision (f), the operator of a vessel on which salmon are taken for commercial purposes shall not permit a person on board that vessel while salmon are being taken or transported unless that person was less than 14 years of age or 70 years of age on April 1 of the current license year or that person has

a commercial fishing salmon stamp affixed to the person's commercial fishing license.

(c) Except as provided in subdivision (b) of Section 7852.3 and this subdivision, the department shall issue a commercial fishing salmon stamp upon application therefor and payment of the fee of eighty-five dollars ($85). For any commercial salmon season preceded by a commercial salmon season in which the commercial troll salmon landings in this state equal or exceed 3,000,000 pounds dressed weight, as determined by the department, the fee shall be increased by twelve dollars and fifty cents ($12.50) for every 250,000 pounds over 3,000,000 pounds of dressed weight landings, except that the total fees as adjusted shall not exceed two hundred sixty dollars ($260).

(d) A commercial fishing salmon stamp is valid during the commercial salmon season of the year in which it was issued.

(e) Notwithstanding Section 1053, upon application and payment of an additional fee equal to that prescribed in subdivision (c), the department may issue an additional commercial fishing salmon stamp for a crewmember to the owner or operator of a vessel who holds a commercial fishing salmon stamp.

(f) Notwithstanding subdivision (a), one crewmember of a vessel for which a commercial fishing salmon stamp is issued pursuant to subdivision (e) may be aboard that vessel and take salmon for commercial purposes as a crewmember on that vessel without obtaining a commercial fishing salmon stamp under the following conditions:

(1) The crewmember is designated by name and commercial fishing license number on a form furnished by the department before salmon are taken on the vessel when that crewmember is aboard.

(2) The crewmember has a valid commercial fishing license issued under Section 7850.

(3) The commercial fishing salmon stamp for the crewmember is affixed to the form prescribed in paragraph (1) on which the vessel registration number of the vessel is entered and on which the crewmember who is exempted by this subdivision is designated by the last entered name and commercial fishing license number.

SEC. 5. Section 7861 of the Fish and Game Code is amended to read:

7861. (a) After deducting the administrative costs for issuing the commercial fishing salmon stamps, the department shall deposit the fees received pursuant to subdivision (b) of Section 7852.3 and Section 7860 in the Commercial Salmon Stamp Account in the Fish and Game Preservation Fund. Notwithstanding Section 13340 of the Government Code, the money in the account is continuously appropriated to the department for new or expanded salmon restoration and enhancement programs in the state that will serve to increase ocean salmon landings. No money in this account shall be used in lieu of other funds appropriated for salmon restoration and

enhancement programs authorized by law on or before January 1, 1988.

(b) Thirty dollars ($30) of the fees collected for each commercial fishing salmon stamp issued shall be allocated by the department to be used for raising chinook salmon to a yearling size, at which size they shall be released into state waters. The amount of salmon stamp revenues expended for this purpose in any fiscal year shall not exceed the amount expended by the department for the same purpose during the same period from other funds. The calculation of the amount expended by the department for this purpose shall not include expenditures made by the department for which reimbursements are received from state or federal agencies, public utilities, or private entities for raising chinook salmon to yearling size as part of a fish mitigation program instituted to compensate for the adverse effect of a dam on natural salmon production. If the department expends no funds other than moneys collected from the sale of commercial fishing salmon stamps or moneys for which reimbursements are received as part of an anadromous fish mitigation program for the raising of chinook salmon to yearling size within the period of a fiscal year, the fees prescribed in Section 7860 shall be reduced by an amount equivalent to that portion of the commercial fishing salmon stamp program, as specified in this subdivision.

If the salmon stamps issued pursuant to Section 7860 raise more money for the purpose of this subdivision than is necessary to match the funds expended by the department during any fiscal year from other funds, then the excess salmon stamp revenue allocated pursuant to this subdivision shall be carried over into the following fiscal year.

SEC. 6. Section 7861.6 of the Fish and Game Code is repealed.

SEC. 7. Section 7862 of the Fish and Game Code is amended to read:

7862. A Commercial Salmon Trollers Advisory Committee shall be established consisting of six 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. One member shall be selected, with an alternate, from lists submitted by individual commercial passenger fishing boat operators or by organizations deemed to represent the commercial passenger fishing boat operators 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 subdivision (a) of 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 commercial fishing salmon 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. 8. Section 7925 of the Fish and Game Code is amended to read:

7925. (a) If a vessel is licensed under this article and is used to take salmon or has salmon aboard in ocean waters north of Point Arguello, there shall be on board that vessel, a total number of commercial fishing salmon stamps sufficient to have at least one for the operator and one for each crewmember required by United States Coast Guard regulations, excepting an operator or a crewmember who is exempt from the requirement under subdivision (b) of Section 7860. The commercial fishing salmon stamps shall be affixed to either the commercial fishing licenses of the operator and the crewmembers or, pursuant to subdivision (b), to the commercial passenger fishing license. No person shall operate, or cause to be operated, any vessel licensed under this article in violation of this subdivision.

(b) Notwithstanding Section 1053, the department may issue to the owner or operator of a vessel licensed pursuant to this article, upon application and payment of the fees prescribed in subdivision (c) of Section 7860, one commercial fishing salmon stamp for the operator and not more than one additional commercial salmon stamp for each crewmember required by the United States Coast Guard regulations. The commercial fishing salmon stamps issued under this subdivision shall be affixed to the vessel's commercial passenger fishing boat license issued pursuant to this article.

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 enacted before January 1, 1989, deletes or extends that date.

SEC. 9. Section 8233.5 of the Fish and Game Code is amended to read:

8233.5. The department shall not issue or renew a commercial salmon vessel permit unless the owner or operator who applies for the commercial salmon vessel permit has a commercial fishing salmon stamp which was issued prior to, or is issued simultaneously with, the application for issuance or renewal of the commercial salmon vessel permit or unless the owner or operator is 70 years of age on or before April 1 of the current license year.

The first commercial fishing salmon stamp issued to an owner or operator of a commercial salmon vessel shall be affixed to the commercial fishing license of that owner or operator. Any additional commercial fishing salmon stamp issued to that person pursuant to this section for additional commercial salmon fishing vessels owned or operated by that person shall be affixed to the vessel registrations

of those additional vessels for which commercial salmon vessel permits are issued or renewed.

SEC. 10. Section 8664.2 is added to the Fish and Game Code, to read:

8664.2. (a) Notwithstanding Sections 8693 and 8724, gill nets and trammel nets shall not be used offshore of San Nicolas Island in Ventura County in waters 20 fathoms or less in depth at mean lower low water.

(b) No person, except state, local, or federal employees in the performance of their official duties, shall discharge any firearm within the sea otter translocation zone surrounding San Nicolas Island.

(c) For purposes of this section, "sea otter translocation zone" includes San Nicolas Island, the nearby islet of Begg Rock, and surrounding waters within the following coordinates:

(North Latitude/West Longitude)

33°27.8'/119°34.3'	33°20.5'/119°15.5'
33°13.5'/119°11.8'	33°06.5'/119°15.3'
33°02.8'/119°26.8'	33°08.8'/119°46.3'
33°17.2'/119°56.9'	33°30.9'/119°54.2'

(d) The taking of a sea otter that is incidental to, and not for the purpose of, the carrying out of an otherwise lawful activity within the sea otter management zone described in subdivision (e), is not a violation of the California Endangered Species Act, Chapter 1.5 (commencing with Section 2050) of Division 3, or Section 4700.

(e) For purposes of this section, "sea otter management zone" includes all waters, islands, islets, and land areas seaward of mean high tide subject to the jurisdiction of the United States, including state tidelands, located south of Point Conception (34°26.9' N. Latitude), excepting therefrom any area within the sea otter translocation zone described in subdivision (c).

(f) This section shall become operative only upon the relocation and release of sea otters to San Nicolas Island. This section shall become inoperative if the sea otter translocation experiment is declared a failure pursuant to the provisions of Public Law 99-625.

SEC. 11. (a) The Legislature finds and declares as follows:

(1) It was the intent of the Legislature in passing Senate Bill 2517 of the 1985–86 Regular Session (Ch. 862, Stats. 1986) to only require commercial passenger fishing boats taking salmon for sport purposes north of Point Arguello to obtain a commercial fishing salmon stamp for the owner or operator and an additional stamp for each crewmember required by the Coast Guard.

(2) Chapter 862 of the Statutes of 1986, however, required, beginning with the 1987 salmon fishing season, the owner or operator of each commercial passenger fishing boat operating north of Point Arguello to obtain commercial fishing salmon stamps whether or not their boat was actually taking salmon for sport purposes.

(3) The collection of salmon stamp fees from some commercial

passenger fishing boat owners or operators, who are operating north of Point Arguello and who are not landing salmon taken under sportfishing licenses, imposes an extreme economic hardship upon these vessel owners or operators.

(b) Notwithstanding any other provision of law, the department shall refund any commercial salmon stamp fees paid during the 1987 license year by commercial passenger fishing boat owners or operators who are operating north of Point Arguello and who are not landing salmon taken under sportfishing licenses upon receipt of a claim submitted to the department as it directs.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. 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 clarify the intent of the Legislature to exempt persons 70 years of age or older from fees for stamps for commercial fishing in time for this year's season, it is necessary that this act take effect immediately.

CHAPTER 703

An act to amend Sections 251 and 442 of the Revenue and Taxation Code, relating to property taxation.

[Approved by Governor September 17, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 251 of the Revenue and Taxation Code is amended to read:

251. (a) The board shall prescribe all procedures and forms required to carry into effect the veterans', veterans' organization, church, cemetery, college, exhibition, religious, welfare, free public libraries, free museums, public schools, homeowners', and transshipment property tax exemption.

(b) (1) The procedures prescribed pursuant to subdivision (a) shall be deemed satisfied by a qualified lessor by submission to the assessor within 120 days of the commencement date of the lease, or 120 days after the effective date of the act adding this subdivision to this section with respect to any existing lease, whichever is later, information which may be requested by the board with respect to

the lease.

(2) For purposes of this subdivision, "a qualified lessor" is a lessor under a contract designated as a lease between that lessor and an entity using property which qualifies for the property tax exemption provided for by subdivision (d) or (e) of Section 3 of Article XIII of the California Constitution under which the lessee has the option at the end of the lease term of acquiring the property described in the lease for one dollar ($1), or any other nominal sum.

(3) No filing or application for exemption shall thereafter be required by a qualified lessor with respect to that lease unless the option terms of the lease change.

SEC. 2. Section 442 of the Revenue and Taxation Code is amended to read:

442. The property statement shall show all taxable property owned, claimed, possessed, controlled, or managed by the person filing it and required to be reported thereon.

Every person owning, claiming, possessing, controlling or managing property shall furnish any required information or records to the assessor for examination at any time.

The requirements of this article shall be satisfied with respect to property belonging to others for which the declarer has contractual property tax obligations if the declarer includes that property in the property statement, submits the statement timely, and includes in the statement all information required in the statement pertaining to property belonging to others.

Property which is now or hereafter the subject of a contract designated as a lease wherein the property being leased qualifies for the property tax exemption provided for by subdivision (d) or (e) of Section 3 of Article XIII of the California Constitution, and the lessee has the option of acquiring the property leased at the end of the lease term for one dollar ($1), or any other nominal consideration, shall be regarded as owned by the lessee and shall not be required to be shown on any property statement of the lessor.

CHAPTER 704

An act to amend Section 868.5 of the Penal Code, and to amend Section 676 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 17, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 868.5 of the Penal Code is amended to read:

868.5. (a) Notwithstanding any other provision of law, a prosecuting witness 16 years of age or under in a case involving a violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a, 289, or

647a, or a violation of subdivision (1) of Section 314, shall be entitled for support to the attendance of up to two family members of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The person or persons so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make notes during the hearing or proceeding.

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the minor witness in any way.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

SEC. 1.5. Section 868.5 of the Penal Code is amended to read:

868.5. (a) Notwithstanding any other provision of law, a prosecuting witness 16 years of age or under in a case involving a violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a, 289, 647.6, or former Section 647a, or a violation of subdivision (1) of Section 314, shall be entitled for support to the attendance of up to two family members of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The person or persons so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make

notes during the hearing or proceeding.

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the minor witness in any way.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

SEC. 2. 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. Nothing in this section shall preclude the attendance of up to two family members of a prosecuting witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The judge or referee may nevertheless admit those persons he or she 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 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.

(c) The name of a minor found to have committed one of the offenses listed in subdivision (a) shall not be confidential, unless the court, for good cause, so orders.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 868.5 of the Penal Code proposed by both this bill and AB 1359. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 868.5 of the Penal Code, and (3) this bill is enacted after AB 1359, in which case Section 1 of this bill shall not become operative.

CHAPTER 705

An act to amend Section 11114 of, and to add Sections 11114.3 and 13519.1 to, the Penal Code, relating to law enforcement, and making an appropriation therefor.

[Approved by Governor September 17, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 11114 of the Penal Code is amended to read:

11114. (a) All local police and sheriffs' departments shall accept any report, including any telephonic report, of a missing person, including runaways, without delay and shall give priority to the handling of these reports over the handling of reports relating to crimes involving property. In cases where the person making a report of a missing person or runaway, contacts, including by telephone, the California Highway Patrol, the California Highway Patrol may take the report, and shall immediately advise the person making the report of the name and telephone number of the police or sheriff's department having jurisdiction of the residence address of the missing person or runaway and of the name and telephone number of the police or sheriff's department having jurisdiction of the place where the person was last seen. In cases where the report is taken by a department other than that of the city or county of residence of the missing person or runaway, the department taking the report shall, without delay, notify, and forward a copy of the report when completed to, the police or sheriff's department or departments having jurisdiction of the residence address of the missing person or runaway and of the place where the person was last seen. The report shall be transmitted by the department, or division of the California Highway Patrol, which took the report to the State Department of Justice, in a format and according to procedures established by the State Department of Justice, which shall transmit the report to the National Crime Information Center Missing Person System, or, at the option of the local police or sheriff's department or the California Highway Patrol, the local police or sheriff's department or the California Highway Patrol may transmit the report directly to federal agencies. If the person reported missing is under 12 years of age, the local police or sheriff's department or the California Highway Patrol shall transmit the report to the National Crime Information Center Missing Person System within four hours after accepting the report. The police or sheriff's department or California Highway Patrol division having jurisdiction of the place in which the person reported missing was last seen may initiate the investigation of the location of the missing person, irrespective of the area of jurisdiction of the department taking the report.

(b) When any person makes a report of a missing person to a police department, sheriff's department, district attorney's office, or other law enforcement authority, the person making the report shall give it in person or by mail on a form supplied by the Department of Justice authorizing the release of the dental records of the person reported missing and authorizing the release of a recent photograph of a person reported missing who is under 18 years of age. Included with the form shall be instructions which state that if the person reported missing is still missing 30 days after the report is made, the release form signed by a member of the family or next of kin of the missing person should be taken to the dentist or dentists of the missing person to obtain the release of the dental records and that dental records should be submitted within 10 days by the person to whom released to the police or sheriff's department or other law enforcement authority to which the missing person report was made. When the person reported missing has not been found within 30 days and no family or next of kin exists or can be located, the law enforcement authority may execute a written declaration, stating that an active investigation seeking the location of the missing person is being conducted, and that the dental records are necessary for the exclusive purpose of furthering the investigation. The written declaration, signed by a peace officer, is sufficient authority for the dentist or dentists to release the missing person's dental records.

(c) When a person reported missing has not been found within 45 days, the sheriff, chief of police, or other law enforcement authority initiating and conducting the investigation for the missing person shall confer with the coroner or medical examiner prior to the preparation of a missing person report. After conferring with the coroner or medical examiner, the sheriff, chief of police, or other law enforcement authority initiating and conducting the investigation for the missing person shall submit a missing person report and the dental records and photograph received pursuant to subdivision (b) to the Department of Justice on forms supplied by the department for that purpose.

(d) Notwithstanding subdivisions (b) and (c), the form provided under subdivision (b) shall state that if the person reported missing is under 18 years of age, the form should be taken to the dentist or dentists immediately when the law enforcement authority determines that the disappearance was under suspicious circumstances or when the law enforcement authority determines that the person missing is under 13 years of age and has been missing at least 14 days, and that dental records and a recent photograph of the missing juvenile should be submitted immediately thereafter to the law enforcement authority. Where authorized to execute a written declaration to obtain the release of dental records, the law enforcement authority may do so immediately when a person reported missing who is under 18 years of age is determined by the authority to have disappeared under suspicious circumstances. In each case, the law enforcement authority should confer immediately

with the coroner or medical examiners and should submit its report including the dental records within 24 hours thereafter to the Department of Justice.

(e) When a person reported missing has been found, the sheriff, chief of police, coroner or medical examiner, or other law enforcement authority shall report that information to the Department of Justice. After receiving that report, the department shall erase all records with respect to that person which are maintained pursuant to subdivision (f).

(f) The Department of Justice shall maintain a file of information concerning persons reported to it as missing and who have not been reported as found. The file shall contain the information referred to in subdivision (c) and any other information that the Department of Justice finds to be relevant to assisting in the location of a missing person.

The Department of Justice files shall be made available to law enforcement agencies attempting to locate missing persons. The department shall develop a system of cataloging missing person reports according to a variety of characteristics to facilitate locating particular categories of reports as needed.

The Department of Justice shall compile a missing children registry consisting of reports of missing juveniles as specified in subdivisions (a), (b), (c), and (d), and shall distribute a missing children bulletin on a quarterly basis to local law enforcement agencies and public schools throughout this state. The Department of Justice shall also make this information accessible to other parties involved in efforts to locate missing children as prescribed and to other parties as the department deems appropriate.

SEC. 2. Section 11114.3 is added to the Penal Code, to read:

11114.3. (a) The Legislature finds and declares that it is the duty of all law enforcement agencies to immediately assist any person who is attempting to make a report of a missing person or runaway.

(b) The Department of the California Highway Patrol shall, by June 30, 1988, develop, adopt, and implement a written policy for coordinating each of its divisions with the police and sheriffs' departments located within each division in taking, transmitting, and investigating reports of missing persons, including runaways.

(c) The Department of the California Highway Patrol shall report to the Legislature on or before June 30, 1989, regarding the experience under, and the effects of, subdivision (b).

SEC. 3. Section 13519.1 is added to the Penal Code, to read:

13519.1. (a) The commission shall implement by July 1, 1988, a course or courses of instruction for the training of law enforcement officers and law enforcement dispatchers in the handling of missing person and runaway cases and shall also develop guidelines for law enforcement response to missing person and runaway cases. The course or courses of instruction and the guidelines shall include, but not be limited to, timeliness and priority of response, assisting persons who make missing person reports to contact the appropriate

law enforcement agency in the jurisdiction of the residence address of the missing person or runaway and the appropriate law enforcement agency in the jurisdiction where the missing person or runaway was last seen, and coordinating law enforcement agencies for the purpose of efficiently and effectively taking and investigating missing person reports.

As used in this section, "law enforcement" includes any officers or employees of a local police or sheriff's office or of the California Highway Patrol.

(b) The course of basic training for law enforcement officers and law enforcement dispatchers shall, not later than January 1, 1989, include adequate instruction in the handling of missing person and runaway cases developed pursuant to subdivision (a).

(c) All law enforcement officers and law enforcement dispatchers who have received their basic training before January 1, 1989, shall participate in supplementary training on missing person and runaway cases, as prescribed and certified by the commission. The training required by this subdivision shall be completed not later than January 1, 1991.

SEC. 4. The sum of fifty thousand dollars ($50,000) is hereby appropriated from the Peace Officers' Training Fund to the Commission on Peace Officer Standards and Training for purposes of Section 3 of this act.

CHAPTER 706

An act to amend Sections 669, 1170.1, and 1238 of, and to add Section 12022.75 to, the Penal Code, relating to sentences.

[Approved by Governor September 17, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 669 of the Penal Code is amended to read:

669. When any person is convicted of two or more crimes, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same judge or by different judges, the second or other subsequent judgment upon which sentence is ordered to be executed shall direct whether the terms of imprisonment or any of them to which he is sentenced shall run concurrently or consecutively; life sentences, whether with or without the possibility of parole, may be imposed to run consecutively with one another or with any other term of imprisonment for a felony conviction. Whenever a person is committed to prison on a life sentence which is ordered to run consecutive to any determinate term of imprisonment imposed pursuant to Sections 1170, 1170.1, 667.5, 12022, 12022.4, 12022.5,

12022.6, 12022.7, and 12022.75, the determinate term of imprisonment shall be served first and no part thereof shall be credited toward the person's eligibility for parole as calculated pursuant to Section 3046.

In the event that the court at the time of pronouncing the second or other judgment upon such person had no knowledge of a prior existing judgment or judgments, or having knowledge, fails to determine how the terms of imprisonment shall run in relation to each other, then, upon such failure so to determine, or upon such prior judgment or judgments being brought to the attention of the court at any time prior to the expiration of 60 days from and after the actual commencement of imprisonment upon the second or other subsequent judgments, the court shall, in the absence of the defendant and within 60 days of such notice, determine how the term of imprisonment upon said second or other subsequent judgment shall run with reference to the prior incompleted term or terms of imprisonment. Upon the failure of the court so to determine how the terms of imprisonment on the second or subsequent judgment shall run, the term of imprisonment on the second or subsequent judgment shall run concurrently.

The Department of Corrections shall advise the court pronouncing the second or other subsequent judgment of the existence of all prior judgments against the defendant, the terms of imprisonment upon which have not been completely served.

SEC. 2. 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 these convictions shall be the sum of the principal term, the subordinate term and any additional term imposed pursuant to Section 667.5, 667.6, or 12022.1. 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, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9. 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, 12022.4, 12022.5, 12022.7, 12022.75, or 12022.9.

(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, 12022.4, 12022.5, 12022.7, 12022.75, or 12022.9. 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 the 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 the convictions which the 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, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, and 12022.9, 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, 12022.4, 12022.5, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for

weapons as provided in either Section 12022, 12022.4, or 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667.5, 667.6, 12022, 12022.1, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9 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, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, or 12022.9 or the defendant stands convicted of felony escape from an institution in which he or she 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, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, and 12022.9 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, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person 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. 3. 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 these convictions shall be the sum of the principal term, the subordinate term and any additional term imposed pursuant to Section 667.5, 667.6, or 12022.1. 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, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, or 12022.9. 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) or (9) 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, 12022.4, 12022.5, 12022.7, 12022.75, or 12022.9.

(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, 12022.4, 12022.5, 12022.7, 12022.75, or 12022.9. 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 the 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 the convictions which the 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, 12022.4, 12022.5, 12022.6, 12022.7, and 12022.9, 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,

12022.4, 12022.5, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667.5, 667.6, 12022, 12022.1, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9 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, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, or 12022.9 or the defendant stands convicted of felony escape from an institution in which he or she 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, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, and 12022.9 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, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person 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. 4. Section 1238 of the Penal Code is amended to read:

1238. (a) An appeal may be taken by the people from any of the following:

(1) An order setting aside the indictment, information, or complaint.

(2) A judgment for the defendant on a demurrer to the indictment, accusation, or information.

(3) An order granting a new trial.

(4) An order arresting judgment.

(5) An order made after judgment, affecting the substantial rights of the people.

(6) An order modifying the verdict or finding by reducing the degree of the offense or the punishment imposed or modifying the offense to a lesser offense.

(7) An order dismissing a case prior to trial made upon motion of the court pursuant to Section 1385 whenever such order is based upon an order granting defendant's motion to return or suppress property or evidence made at a special hearing as provided in this code.

(8) An order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

(9) An order denying the motion of the people to reinstate the complaint or a portion thereof pursuant to Section 871.5.

(10) The imposition of an unlawful sentence, whether or not the court suspends the execution of the sentence, except that portion of a sentence imposing a prison term which is based upon a court's choice that a term of imprisonment (A) be the upper, middle, or lower term, unless the term selected is not set forth in an applicable statute, or (B) be consecutive or concurrent to another term of imprisonment, unless an applicable statute requires that the term be consecutive. As used in this paragraph, "unlawful sentence" means the imposition of a sentence not authorized by law or the imposition of a sentence based upon an unlawful order of the court which strikes or otherwise modifies the effect of an enhancement or prior conviction.

(b) If, pursuant to paragraph (8) of subdivision (a), the people prosecute an appeal to decision, or any review of such decision, it shall be binding upon them and they shall be prohibited from refiling the case which was appealed.

(c) When an appeal is taken pursuant to paragraph (7) of subdivision (a), the court may review the order granting defendant's motion to return or suppress property or evidence made at a special hearing as provided in this code.

(d) Nothing contained in this section shall be construed to authorize an appeal from an order granting probation. Instead, the people may seek appellate review of any grant of probation, whether or not the court imposes sentence, by means of a petition for a writ of mandate or prohibition which is filed within 60 days after probation is granted. The review of any grant of probation shall include review of any order underlying the grant of probation.

(e) 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 enacted before January 1, 1989, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1989, pursuant to Section 9611 of the Government Code, Section 1238 of the Penal Code, as amended by Section 5 of Chapter 938 the Statutes of 1980, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 5. Section 12022.75 is added to the Penal Code, to read:

12022.75. Any person who, for the purpose of committing a felony, administers by injection, inhalation, ingestion, or any other means, any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code, against the victim's will by means of force, violence, or fear of immediate and unlawful bodily injury to the victim or another person, shall, in addition and consecutive to the penalty provided for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years.

SEC. 6. Section 3 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and AB 1559. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 1170.1 of the Penal Code, and (3) this bill is enacted after AB 1559, in which case Section 2 of this bill shall not become operative.

CHAPTER 707

An act to amend Sections 18025.5, 18026, 18028, and 18030.5 of, and to add Sections 18022.5, 18025.5, 18029.4, and 18064.2 to, the Health and Safety Code, relating to manufactured structures.

[Approved by Governor September 17, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 18022.5 is added to the Health and Safety Code, to read:

18022.5. (a) Whenever the director determines through an investigation that any person has violated this part, or any regulation, order, license, permit, decision, demand, or requirement or any part or provision thereof issued pursuant to this part, the director may bring an action in the name of the people of the State of California against that person to enjoin the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.

In the action, an order or judgment may be entered awarding a preliminary or final injunction as may be proper.

If the director makes a showing satisfactory to the court that the violation or threatened violation jeopardizes funds and properties of others in the custody or under the control of the defendant, the court may appoint a receiver for management of the business of the defendant, including, but not limited to, the funds and properties of others in his or her possession or may make any other order as it deems appropriate to protect and preserve those funds and properties.

(b) The director may include in any action authorized by

subdivision (a), a claim for restitution on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award appropriate relief to those persons.

SEC. 2. Section 18025.5 of the Health and Safety Code is amended to read:

18025.5. (a) Pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.), the department is authorized to assume responsibility for enforcement of manufactured home and mobilehome construction and safety standards relating to any issue with respect to which a federal standard has been established. The department may adopt regulations to ensure acceptance by the Secretary of Housing and Urban Development of California's plan for administration and enforcement of federal manufactured home and mobilehome safety and construction standards.

(b) The department is authorized to conduct inspections and investigations which it determines may be necessary to secure enforcement of this part and regulations adopted pursuant thereto. For the purposes of enforcement of this part and the related regulations, persons duly designated by the director of the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(1) Enter, at any reasonable times and without advance notice, any factory, warehouse, saleslot, or establishment in which manufactured homes, mobilehomes, recreational vehicles, commercial coaches, or special purpose commercial coaches are manufactured, stored, held for sale, sold, or offered for sale, rent, or lease.

(2) Inspect, at reasonable times, within reasonable limits, and in a reasonable manner, any factory, warehouse, saleslot, or establishment, and inspect the books, papers, records, and documents to ensure compliance with this part.

(c) The department shall report monthly to the United States Department of Housing and Urban Development on the status of consumer complaints received by the department related to the performance of specific third-party inspection entities and shall make appropriate recommendations as to the Department of Housing and Urban Development's continued acceptance and approval of those entities.

(d) When the department is not the enforcement agency, every third-party entity shall promptly report, in writing, to the department any change in contractual relations with a manufacturer, which the third-party entity reasonably believes to be related to the inspection activities of the third-party entity.

(1) The department shall investigate all of these reports and make all recommendations to the Department of Housing and Urban Development regarding the department's findings which are appropriate.

(2) The findings of the department may be the basis for the commencement of a proceeding concerning revocation or suspension of a manufacturer's license.

(e) This section shall remain in effect only until three calendar years subsequent to the initial approval date by the Department of Housing and Community Development of a third-party entity pursuant to subdivision (b) of Section 18020 or until January 1, 1990, whichever date occurs first and as of that date is repealed unless a later enacted statute which is chaptered on or before the date of repeal deletes or extends those dates.

SEC. 3. Section 18025.5 is added to the Health and Safety Code, to read:

18025.5. (a) Pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.), the department is authorized to assume responsibility for enforcement of manufactured home and mobilehome construction and safety standards relating to any issue with respect to which a federal standard has been established. The department may adopt regulations to ensure acceptance by the Secretary of Housing and Urban Development of California's plan for administration and enforcement of federal manufactured home and mobilehome safety and construction standards.

(b) The department is authorized to conduct inspections and investigations which it determines may be necessary to secure enforcement of this part and regulations adopted pursuant thereto. For the purposes of enforcement of this part and the related regulations, persons duly designated by the director of the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(1) Enter, at any reasonable times and without advance notice, any factory, warehouse, saleslot, or establishment in which manufactured homes, mobilehomes, recreational vehicles, commercial coaches, or special purpose commercial coaches are manufactured, stored, held for sale, sold, or offered for sale, rent, or lease.

(2) Inspect, at reasonable times and within reasonable limits and in a reasonable manner, any factory, warehouse, saleslot, or establishment, and inspect the books, papers, records, and documents to ensure compliance with this part.

(c) This section shall become operative three calendar years subsequent to the initial approval date by the Department of Housing and Community Development of a third-party entity pursuant to subdivision (b) of Section 18020 or on January 1, 1990, whichever date first occurs.

SEC. 4. Section 18026 of the Health and Safety Code is amended to read:

18026. All manufactured homes, mobilehomes, recreational vehicles, commercial coaches, and special purpose commercial coaches manufactured on or after September 1, 1958, which are sold,

offered for sale, rented, or leased within this state shall bear a federal label or an insignia of approval issued by the department, whichever is appropriate, to indicate compliance with the regulations of the department adopted pursuant to this part, which were in effect on the date of manufacture of the manufactured home, mobilehome, recreational vehicle, commercial coach, or special purpose commercial coach.

The department may issue insignia for manufactured homes, mobilehomes, recreational vehicles, commercial coaches, or special purpose commercial coaches manufactured prior to the effective dates of the appropriate regulations which meet the requirements of reasonable standards of health and safety as set forth in this part or the regulations adopted pursuant thereto in effect at the time of that issue. It is unlawful for any person to remove, or cause to be removed, an insignia of approval without prior authorization by the department.

SEC. 5. Section 18028 of the Health and Safety Code is amended to read:

18028. The department may adopt regulations for the construction of commercial coaches and special purpose commercial coaches, and of manufactured homes and mobilehomes which are not subject to the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. Sec. 5401 et seq.) which it determines are reasonably necessary in order to protect the health and safety of the occupants and the public.

The regulations for commercial coaches shall adopt by reference, with appropriate additions or deletions therefrom, the model construction codes adopted by the International Conference of Building Officials and the model electrical code adopted by the National Fire Protection Association.

SEC. 6. Section 18029.4 is added to the Health and Safety Code, to read:

18029.4. Any special purpose commercial coach which is designed, manufactured, remanufactured, altered, used, or converted for use as a module of a permanently constructed building shall comply with the construction standards applicable to commercial coaches.

SEC. 7. Section 18030.5 of the Health and Safety Code is amended to read:

18030.5. A manufactured home, mobilehome, recreational vehicle, commercial coach, or special purpose commercial coach which meets the standards prescribed by this chapter, and the regulations adopted pursuant thereto, shall not be required to comply with any local ordinances or regulations prescribing requirements in conflict with the standards prescribed in this chapter.

SEC. 8. Section 18064.2 is added to the Health and Safety Code, to read:

18064.2. (a) If the director determines through an investigation

that a person has engaged or is engaging in an activity which is a violation of this part, or which is a violation of a regulation of the department adopted for the purpose of implementing this part, and if the director finds that the action is required in the public interest, he or she may direct the person to desist and refrain from that activity by issuance of an order specifying the nature of the activity and the factual and legal basis for his or her determination. The respondent to whom the order is directed shall immediately, upon receipt of the order, cease the activity described in the order.

(b) The respondent may, within 30 days after service of the order to desist and refrain, file a written request for a hearing to contest the order.

(c) If a written request for hearing is received within 30 days of the date of service of the order, a hearing shall be held. The hearing shall be commenced within 30 days after receipt of respondent's request unless the respondent agrees to a postponement. If the hearing is not held and a decision rendered by the director within 30 days after receipt of respondent's request for a hearing, or the date to which continued with respondent's consent, the order shall be deemed rescinded.

(d) If a person served with an order issued pursuant to this section fails to file a written request for a hearing within 30 days from the date of service of the order, the order shall be deemed a final order of the director and shall not be subject to review by any court or agency.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 708

An act to amend Sections 17511.1, 17511.3, and 17511.4 of the Business and Professions Code, relating to sales.

[Approved by Governor September 17, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 17511.1 of the Business and Professions Code is amended to read:

17511.1. As used in this article, "telephonic seller" or "seller" means a person who, on his or her own behalf or through salespersons or through the use of an automatic dialing-announcing device, as defined in Section 2871 of the Public Utilities Code, causes a

telephone solicitation or attempted telephone solicitation to occur which meets the criteria specified in subdivision (a) or (b) and who is not exempted by subdivision (c), as follows:

(a) A telephone solicitation or attempted telephone solicitation wherein the telephonic seller initiates telephonic contact with a prospective purchaser and represents or implies one or more of the following:

(1) That a prospective purchaser who buys one or more items will also receive additional or other items, whether or not of the same type as purchased, without further cost. For purposes of this subdivision, "further cost" does not include actual postage or common carrier delivery charges, if any.

(2) That a prospective purchaser will receive a prize or gift, if the person also encourages the prospective purchaser to do either of the following:

(A) Purchase or rent any goods or services.

(B) Pay any money, including, but not limited to, a delivery or handling charge.

(3) That a prospective purchaser who buys office equipment or supplies will, because of some unusual event or imminent price increase, be able to buy these items at prices which are below those that are usually charged or will be charged for the items.

(4) That the seller is a person other than the person he or she is.

(5) That the items for sale are manufactured or supplied by a person other than the actual manufacturer or supplier.

(6) That the seller is offering to sell the prospective purchaser any gold, silver, or other metals, including coins, diamonds, rubies, sapphires, or other stones, coal or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, or any other investment opportunity of any type whatsoever.

(b) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by advertisements on behalf of the telephonic seller wherein it is represented or implied that the seller is offering to sell to the prospective purchaser any gold, silver, or other metals, including coins, diamonds, rubies, sapphires, or other stones, coal or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, or any other investment opportunity of any type whatsoever.

(c) For purposes of this article, "telephonic seller" or "seller" does not include any of the following:

(1) A person offering or selling a security qualified under Sections 25110, 25120, or 25130 of the Corporations Code or exempt from qualification under Chapter 1 (commencing with Section 25100) of Part 2 of Division 1 of Title 4 of the Corporations Code. The fact that a notice claiming an exemption under the Corporate Securities Law of 1968 is filed with the Department of Corporations does not create an exemption under this paragraph.

(2) A person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4, when the solicited transaction is

governed by that law.

(3) A person licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3, when the solicited transaction is governed by that law.

(4) A person licensed or certificated pursuant to Part 2 (commencing with Section 680) of Division 1 of the Insurance Code, including a person licensed pursuant to Chapter 5 (commencing with Section 1621) thereof, when the solicited transaction is governed by that law.

(5) A person offering or selling a franchise registered pursuant to Section 31110 of the Corporations Code or exempt from registration under Chapter 1 (commencing with Section 31100) of Part 2 of Division 5 of Title 4 of the Corporations Code. The fact that a notice claiming an exemption under the Franchise Investment Law is filed with the Department of Corporations does not create an exemption under this paragraph.

(6) A person soliciting the sale of a seller assisted marketing plan, as defined in Title 2.7 (commencing with Section 1812.200) of Part 4 of Division 3 of the Civil Code, who has filed with the Secretary of State the documents required by Section 1812.203 of the Civil Code.

(7) A person primarily soliciting the sale of a newspaper of general circulation, as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code, a magazine, or membership in a book or record club whose program operates in conformity with the requirements of Section 1584.5 of the Civil Code.

(8) A person soliciting business from prospective purchasers who have previously purchased from the person making the solicitation or the business enterprise for which the person is calling.

(9) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation but completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser. However, if a seller, directly following a telephone solicitation, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.

(10) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this paragraph, "supervised financial institution" means any commercial bank, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurer, provided that the institution is subject to supervision by an official or agency of this state or of the United States.

(11) A person soliciting the sale of a preneed funeral arrangement regulated by Article 9 (commencing with Section 7735) of Chapter 12 of Division 3.

(12) A person licensed pursuant to Chapter 19 (commencing with

Section 9600) of Division 3 when acting pursuant to that licensure.

(13) A person soliciting the sale of services provided by a cable television system licensed or franchised pursuant to Section 53066 of the Government Code or any other authority.

(14) A person or an affiliate of a person whose business is regulated by the Public Utilities Commission.

(15) A person soliciting the sale of a commodity pursuant to Part 2 (commencing with Section 58601) of Division 21 of the Food and Agricultural Code, if the solicitation neither intends to, nor actually results in, a sale which costs the purchaser in excess of one hundred dollars ($100).

(16) An issuer or subsidiary of an issuer that has a class of securities which is subject to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78*l*) and which is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g) (2) of that section.

(17) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer.

(18) A person soliciting a transaction regulated by the Commodity Futures Trading Commission if the person is registered or temporarily licensed for this activity with the Commodity Futures Trading Commission under the Commodity Exchange Act, (7 U.S.C. Sec. 1 et seq.) and the registration or license has not expired or been suspended or revoked.

(19) A person who sells coins or bullion at a price which is not more than 25 percent more than the price at which the seller is concurrently buying the same coins or bullion, if: (A) the seller has had a retail location in California from which he or she has been selling coins or bullion to the public in person for at least three years; (B) the telephonic solicitations are not the person's primary business and sales made telephonically make up less than 20 percent of the person's total retail sales; and (C) the person claiming an exemption pursuant to this subdivision complies with Section 17511.3, as applicable, and subdivision (p) of Section 17511.4.

(20) A person licensed pursuant to Chapter 14 (commencing with Section 1800) of Division 1 of the Financial Code to receive money for transmittal to foreign countries if the license has not expired or been suspended or revoked.

(d) In any civil proceeding alleging a violation of this article, the burden of proving an exemption or an exception from a definition is upon the person claiming it, and in any criminal proceeding alleging a violation of this article, the burden of producing evidence to support a defense based upon an exemption or an exception from a definition is upon the person claiming it.

SEC. 2. Section 17511.3 of the Business and Professions Code is amended to read:

17511.3. (a) Not less than 10 days prior to doing business in this state, a telephonic seller shall register with the department by filing

with the Consumer Law Section of the department the information required by Section 17511.4 and a filing fee of fifty dollars ($50). A seller shall be deemed to do business in this state if the seller solicits prospective purchasers from locations in this state or solicits prospective purchasers who are located in this state.

A person claiming an exemption pursuant to paragraph (19) of subdivision (c) of Section 17511.1, shall file with the Consumer Law Section of the department, in lieu of the information required by subdivisions (a) to (o), inclusive, of Section 17511.4, the information required by subdivision (p) of Section 17511.4 and a filing fee of fifty dollars ($50).

The information required by Section 17511.4 shall be submitted on a form provided by the Attorney General and shall be verified by a declaration signed by each principal of the telephonic seller under penalty of perjury. The declaration shall specify the date and location of signing. Information submitted pursuant to subdivision (j) or (k) of Section 17511.4 shall be clearly identified and appended to the filing. The information submitted pursuant to Section 17511.4 shall become part of the investigatory records and intelligence information compiled by the department for law enforcement purposes.

(b) Registration of a telephonic seller shall be valid for one year from the effective date thereof and may be annually renewed by making the filing required by Section 17511.4 and paying a filing fee of fifty dollars ($50).

(c) Whenever, prior to expiration of a seller's annual registration, there is a material change in the information required by Section 17511.4, the seller shall, within 10 days, file an addendum updating the information with the Consumer Law Section of the department. However, changes in salespersons soliciting on behalf of a seller shall be updated by addendums filed, if necessary, in quarterly intervals computed from the effective date of registration. The addendum shall provide the required information for all salespersons who are currently soliciting or have solicited on behalf of the seller at any time during the period between the filing of the registration, or the last addendum, and the current addendum, and shall include salespersons no longer soliciting for the seller as of the date of the filing of the current addendum.

(d) Upon receipt of a filing and filing fee pursuant to subdivision (a) or (b), the department shall send the telephonic seller a written confirmation of receipt of the filing. If the seller has more than one business location, the written confirmation shall be sent to the principal business location identified in the seller's filing in sufficient number so that the seller has one for each business location. The seller shall post the confirmation of receipt of filing, within 10 days of receipt thereof, in a conspicuous place at each of the seller's business locations and shall have available for inspection by any governmental agency at each location a copy of the entire registration statement which has been filed with the department.

Until confirmation of receipt of filing is received and posted, the seller shall post in a conspicuous place at each of the seller's business locations within this state a copy of the first page of the registration form sent to the department. The seller shall also post in close proximity to either the confirmation of receipt of filing, or until the confirmation is received, the first page of the submitted registration form, the name of the individual or individuals in charge of each location from which the seller does business in this state, as defined in subdivision (a).

SEC. 3. Section 17511.4 of the Business and Professions Code is amended to read:

17511.4. Each filing pursuant to Section 17511.3 shall contain the following information:

(a) The name or names of the seller, including the name under which the seller is doing or intends to do business, if different from the name of the seller, and the name of any parent or affiliated organization (1) that will engage in business transactions with purchasers relating to sales solicited by the seller or (2) that accepts responsibility for statements made by, or acts of, the seller relating to sales solicited by the seller.

(b) The seller's business form and place of organization and, if the seller is a corporation, a copy of its articles of incorporation and bylaws and amendments thereto, or, if a partnership, a copy of the partnership agreement, or if operating under a fictitious business name, the location where the fictitious name has been registered. All the same information shall be included for any parent or affiliated organization disclosed pursuant to subdivision (a).

(c) The complete street address or addresses of all locations, designating the principal location from which the telephonic seller will be conducting business. If the principal business location of the seller is not in this state, then the seller shall also designate which of its locations within this state is its main location in the state.

(d) A listing of all telephone numbers to be used by the seller and the address where each telephone using each of these telephone numbers is located.

(e) The name of, and the office held by, the seller's officers, directors, trustees, general and limited partners, sole proprietor, and owners, as the case may be, and the names of those persons who have management responsibilities in connection with the seller's business activities.

(f) The complete address of the principal residence, the date of birth, and the driver's license number and state of issuance of each of the persons whose names are disclosed pursuant to subdivision (e).

(g) The name and principal residence address of each person the telephonic seller leaves in charge at each location from which the seller does business in this state, as defined in subdivision (a) of Section 17511.3, and the business location which each of these persons is or will be in charge of.

(h) A statement, meeting the requirements of this subdivision, as

to both the seller, whether a corporation, partnership, firm, association, joint venture, or any other type of business entity (and whether identified pursuant to subdivision (e) or (g) or not), and as to any person identified pursuant to subdivision (e) or (g) who:

(1) Has been convicted of a felony or misdemeanor involving an alleged violation of this article, or fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. For purposes of this paragraph, a plea of nolo contendere is a conviction.

(2) Has had entered against him or her a final judgment or order in a civil or administrative action, including a stipulated judgment or order, if the complaint or petition in the civil or administrative action alleged acts constituting a violation of this article, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property, or the use of unfair, unlawful, or deceptive business practices.

(3) Is subject to any currently effective injunction or restrictive court order relating to business activity as the result of an action brought by a federal, state, or local public agency or unit thereof, including, but not limited to, an action affecting any vocational license.

(4) Has at any time during the previous seven tax years filed in bankruptcy, been adjudged a bankrupt, been reorganized due to insolvency, or been a principal, director, officer, trustee, general or limited partner, or had management responsibilities of any other corporation, partnership, joint venture, or business entity, that has so filed or was so adjudicated or reorganized, during or within one year after the period that the person held that position.

For purposes of paragraphs (1), (2), and (3), the statement required by this subdivision shall identify the seller or person, the court or administrative agency rendering the conviction, judgment, or order, the docket number of the matter, the date of the conviction, judgment, or order, and the name of the governmental agency, if any, that brought the action resulting in the conviction, judgment, or order. For purposes of paragraph (4), the statement required by this subdivision shall include the name and location of the seller or person filing in bankruptcy, adjudged a bankrupt, or reorganized due to insolvency, and shall include the date thereof, the court which exercised jurisdiction, and the docket number of the matter.

(i) A list of the names and principal residence addresses of salespersons who solicit on behalf of the telephonic seller and the names the salespersons use while so soliciting.

(j) A description of the items the seller is offering for sale and a copy of all sales scripts the telephonic seller requires salespersons to use when soliciting prospective purchasers, or if no sales script is required to be used, a statement to that effect.

(k) A copy of all sales information and literature (including, but not limited to, scripts, outlines, instructions, and information regarding how to conduct telephonic sales, sample introductions,

sample closings, product information, and contest or premium-award information) provided by the telephonic seller to salespersons or of which the seller informs salespersons, and a copy of all written materials the seller sends to any prospective or actual purchaser.

(*l*) If the telephonic seller represents or implies, or directs salespersons to represent or imply, to purchasers that the purchaser will receive certain specific items (including a certificate of any type which the purchaser must redeem to obtain the item described in the certificate) or one or more items from among designated items, whether the items are denominated as gifts, premiums, bonuses, prizes, or otherwise, the filing shall include the following:

(1) A list of the items offered.

(2) The value or worth of each item described to prospective purchasers and the basis for the valuation.

(3) The price paid by the telephonic seller to its supplier for each of these items and the name, address, and telephone number of each item's supplier.

(4) If the purchaser is to receive fewer than all of the items described by the seller, the filing shall include the following:

(A) The manner in which the telephonic seller decides which item or items a particular prospective purchaser is to receive.

(B) The odds a single prospective purchaser has of receiving each described item.

(C) The name and address of each recipient who has, during the preceding 12 months (or if the seller has not been in business that long, during the period the telephonic seller has been in business) received the item having the greatest value and the item with the smallest odds of being received.

(5) All rules, regulations, terms, and conditions a prospective purchaser must meet in order to receive the item.

(m) If the telephonic seller is offering to sell any metal, stone, or mineral, the filing shall include the following:

(1) The name, address, and telephone number of each of the seller's suppliers and a description of each metal, stone, or mineral provided by the supplier.

(2) If possession of any metal, stone, or mineral is to be retained by the seller or will not be transferred to the purchaser until the purchaser has paid in full, the filing shall include the following:

(A) The address of each location where the metal, stone, or mineral will be kept.

(B) If not kept on premises owned by the seller or at an address or addresses set forth in compliance with subdivision (c), the name of the owner of the business at which the metal, stone, or mineral will be kept.

(C) A copy of any contract or other document which evidences the seller's right to store the metal, stone, or mineral at the address or addresses designated pursuant to subparagraph (A).

(3) If the seller is not selling the metal, stone, or mineral from its

own inventory, but instead purchases the metal, stone, or mineral to fill orders taken from purchasers, the filing shall include copies of all contracts or other documents evidencing the seller's ability to call upon suppliers to fill the seller's orders.

(4) If the seller represents to purchasers that the seller has insurance or a surety bond of any type relating to a purchaser's purchase of any metal, stone, or mineral from the seller, the filing shall include a complete copy of all these insurance policies and bonds.

(5) If the seller makes any representation as to the earning or profit potential of purchases of any metal, stone, or mineral, the filing shall include data to substantiate the claims made. If the representation relates to previous sales made by the seller or a related entity, substantiating data shall be based on the experiences of at least 50 percent of the persons who have purchased the particular metal, stone, or mineral from the seller or related entity during the preceding six months (or if the seller or related entity has not been in business that long, during the period the seller or related entity has been in business) and shall include the raw data upon which the representation is based, including, but not limited to, all of the following:

(A) The length of time the seller or related entity has been selling the particular metal, stone, or mineral being offered.

(B) The number of purchasers thereof from the seller or related entity known to the seller or related entity to have made at least the same earnings or profit as those represented.

(C) The percentage that the number disclosed pursuant to subparagraph (B) represents of the total number of purchasers from the seller or related entity of the particular metal, stone, or mineral.

(n) If the telephonic seller is offering to sell an interest in oil, gas, or mineral fields, wells, or exploration sites, the filing shall include disclosure of the following:

(1) The seller's ownership interest, if any, in each field, well, or site being offered for sale.

(2) The total number of interests to be sold in each field, well, or site being offered for sale.

(3) If, in selling an interest in any particular field, well, or site, reference is made to an investigation of these fields, wells, or sites by the seller or anyone else, the filing shall include the following:

(A) The name, business address, telephone number, and professional credentials of the person or persons who made the investigation.

(B) A copy of the report and other documents relating to the investigation prepared by the person or persons.

(4) If the seller makes any representation as to the earning or profit potential of purchases of any interest in these fields, wells, or sites, the filing shall include data to substantiate the claims made. If the representation relates to previous sales made by the seller or a related entity, the substantiating data shall be based on the

experiences of at least 50 percent of the purchasers of the particular interests from the seller or the related entity during the preceding six months (or if the seller has not been in business that long, during the period the seller or related entity has been in business) and shall include the raw data upon which the representation is based, including, but not limited to, all of the following:

(A) The length of time the seller or related entity has been selling the particular interests in the fields, wells, or sites being offered.

(B) The number of purchasers of the particular interests from the seller or related entity known to the seller to have made, at least the same earnings as those represented.

(C) The percentage the number disclosed pursuant to subparagraph (B) represents of the total number of purchasers of the particular interests from the seller or related entity.

(o) The name and address of the telephonic seller's agent in this state, other than the Attorney General, authorized to receive service of process in this state.

(p) If a person, based on paragraph (19) of subdivision (c) of Section 17511.1, claims an exemption from having to file the information required by subdivisions (a) to (o), inclusive, the person shall file, on a form provided by the Attorney General, the following information:

(1) The name or names of the person claiming the exemption, including the name under which the person is doing or intends to do business.

(2) The person's business form, and place of organization, whether corporate or otherwise; or, if operating under a fictitious business name, the location where the fictitious name has been registered.

(3) The complete street address of the person's retail locations, and telephone numbers located therein and a statement as to how long the person has been selling at retail from each location.

(4) A copy of the person's currently valid business license.

(5) A statement reflecting the dollar amount of the person's total retail sales during the 12 months preceding the filing.

(6) A statement reflecting the dollar amount of the person's sales made telephonically during the 12 months preceding the filing.

The filing shall be verified by a declaration signed under penalty of perjury by each principal of the person claiming the exemption. The declaration shall specify the date and location of signing.

If a person filing pursuant to subdivision (p) makes any representation to a prospective purchaser as to the historical movements or changes in the price or value of any coin or bullion, the person shall maintain in its records sufficient data to substantiate each representation. This data shall be retained in the person's records for a period of at least three years after the last date on which a representation is made and shall be made available for inspection upon request by any governmental agency at each of its business locations.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 709

An act to amend Section 221 of, and to add Section 9564 to, the Vehicle Code, relating to abandoned vehicles.

[Approved by Governor September 17, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 221 of the Vehicle Code is amended to read:

221. (a) The term "automobile dismantler" does not include any of the following:

(1) The owner of any premises on which two or more unregistered and inoperable vehicles are held or stored, if the vehicles are used, or intended to be used, for restoration or as replacement parts or otherwise in conjunction with any business of a licensed dealer, manufacturer, or transporter, or in conjunction with the operation and maintenance of any fleet of motor vehicles used for the transportation of persons or property.

(2) The owner of any premises or property used in conjunction with any agricultural, farming, mining, ranching, or motor vehicle repair business.

(3) Any person engaged in the restoration of vehicles of the type described in Section 5004 or in the restoration of other vehicles having historic or classic significance.

(4) The owner of a steel mill, scrap metal processing facility, or similar establishment purchasing vehicles of a type subject to registration, not for the purpose of selling the vehicles, in whole or in part, but exclusively for the purpose of reducing the vehicles to their component materials, if the facility obtains, on a form approved or provided by the department, a certification by the person from whom the vehicles are obtained that each of the vehicles has, except as provided in Section 9564, been cleared for dismantling pursuant to Section 5500 or 11520.

(5) Any person who acquires used parts or components for resale from vehicles which have been previously cleared for dismantling pursuant to Section 5500 or 11520.

Nothing in this paragraph permits a dismantler to acquire or sell used parts or components during the time the dismantler license is under suspension.

(b) Any vehicle acquired for the purpose specified in paragraph (4) of subdivision (a) from other than a licensed dismantler, or from other than an independent hauler who obtained the vehicle, or parts thereof from a licensed dismantler, shall be accompanied by either a receipt issued by the department evidencing proof of clearance for dismantling under Section 5500, or a copy of the ordinance or order issued by a local authority for the abatement of the vehicle pursuant to Section 22660. The steel mill, scrap metal processing facility, or similar establishment acquiring the vehicle shall attach the form evidencing clearance or abatement to the certification required pursuant to this section.

All forms specified in paragraph (4) of subdivision (a) and in this subdivision shall be available for inspection by a peace officer during business hours.

SEC. 2. Section 221 of the Vehicle Code is amended to read:

221. (a) The term "automobile dismantler" does not include any of the following:

(1) The owner of any premises on which two or more unregistered and inoperable vehicles are held or stored, if the vehicles are used, or intended to be used, for restoration or as replacement parts or otherwise in conjunction with any business of a licensed dealer, manufacturer, or transporter, or in conjunction with the operation and maintenance of any fleet of motor vehicles used for the transportation of persons or property.

(2) The owner of any premises or property used in conjunction with any agricultural, farming, mining, ranching, or motor vehicle repair business.

(3) Any person engaged in the restoration of vehicles of the type described in Section 5004 or in the restoration of other vehicles having historic or classic significance.

(4) The owner of a steel mill, scrap metal processing facility, or similar establishment purchasing vehicles of a type subject to registration, not for the purpose of selling the vehicles, in whole or in part, but exclusively for the purpose of reducing the vehicles to their component materials, if either the facility obtains, on a form approved or provided by the department, a certification by the person from whom the vehicles are obtained that each of the vehicles has, except as provided in Section 9564, been cleared for dismantling pursuant to Section 5500 or 11520 or the facility complies with Section 9564.

(5) Any person who acquires used parts or components for resale from vehicles which have been previously cleared for dismantling pursuant to Section 5500 or 11520.

Nothing in this paragraph permits a dismantler to acquire or sell used parts or components during the time the dismantler license is under suspension.

(b) Any vehicle acquired for the purpose specified in paragraph (4) of subdivision (a) from other than a licensed dismantler, or from other than an independent hauler who obtained the vehicle, or parts

thereof from a licensed dismantler, shall be accompanied by either a receipt issued by the department evidencing proof of clearance for dismantling under Section 5500, or a copy of the ordinance or order issued by a local authority for the abatement of the vehicle pursuant to Section 22660. The steel mill, scrap metal processing facility, or similar establishment acquiring the vehicle shall attach the form evidencing clearance or abatement to the certification required pursuant to this section.

All forms specified in paragraph (4) of subdivision (a) and in this subdivision shall be available for inspection by a peace officer during business hours.

SEC. 3. Section 9564 is added to the Vehicle Code, to read:

9564. (a) A scrap metal processor, as described in paragraph (4) of subdivision (a) of Section 221, who acquires a vehicle of a type subject to registration under this code is not required to submit a certificate of nonoperation in lieu of fees, or to pay fees that would otherwise be required for the vehicle to be currently registered, if either of the following is submitted to the department prior to reducing the vehicle to its component materials:

(1) Documentation that the vehicle was acquired pursuant to Section 22669 and is to be disposed of in compliance with Article 2 (commencing with Section 22850) of Chapter 10 of Division 11.

(2) The properly endorsed certificate of title transferring title to the scrap metal processor and any available license plates or registration documents.

(b) A vehicle delivered to a scrap metal processor under subdivision (a) shall not be reconstructed or made operable, except that a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates, pursuant to Section 5004, may be reconstructed or made operable.

SEC. 4. Section 2 of this bill incorporates amendments to Section 221 of the Vehicle Code proposed by both this bill and SB 1132. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 221 of the Vehicle Code, and (3) this bill is enacted after SB 1132, in which case Section 1 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 710

An act relating to parks and recreation.

[Approved by Governor September 17, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. It is the intent of the Legislature that neither this act nor the study required by this act be considered an express indication of an intent to acquire an interest in the property known as the Tehachapi Archaeological Site.

However, the Legislature finds and declares that the Tehachapi Archaeological Site is considered to have high cultural values which should be protected and interpreted for public benefit and should be considered for inclusion in the National Register of Historic Places at the state level and the national level of significance. The site contains numerous archaeological features in an environmental setting which offers excellent interpretative potential on Native American life.

The Department of Parks and Recreation shall study the archaeological significance of the Tehachapi Archaeological Site to determine the level of protection which should be provided for the site and the means of carrying out that protection. In preparing this study, the department shall consult educational institutions, organizations, and individuals.

The department shall report the results of this study to the Legislature by February 1, 1988.

CHAPTER 711

An act to amend, repeal, and add Section 15333 to the Government Code, relating to state government.

[Approved by Governor September 17, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. (a) The Legislature finds and declares as follows:

(1) Approximately 35 percent of the nation's biotechnology companies, including the leading firms engaged in biomedical, agricultural, environmental, marine and biochemical research, are headquartered in California.

(2) California companies have already developed products, such as human insulin and proinsulin, and interferon which have the potential to alleviate human suffering and illness.

(3) Research using biotechnological processes is vital to California's multibillion dollar agricultural industry, offering prospects of increased production, vaccines for animal diseases, disease resistant food crops, drought resistant plant strains, and more nutritional foodstuffs.

(4) The primary responsibility of the state's regulatory and statutory requirements is to protect public health and safety and the environment.

(5) The State of California Interagency Task Force on Biotechnology, established in part by recommendation of Assembly Concurrent Resolution 170 (Res. Ch. 130, Stats. 1984) has determined that existing federal and state regulations are at this time adequate and appropriate to regulate the products and activities of the biotechnology industry.

(6) The task force, under authority of Executive Order D-46-85, has identified public education of biotechnology as a clear and current need.

(7) The Interagency Task Force on Biotechnology has identified the need to make the public aware of the benefits and any corresponding risks of new products and processes developed from biotechnological research.

(b) It is the intent of the Legislature to foster the dissemination of international and domestic information on the products, processes, and business environment of biotechnology. It is also the intent of the Legislature that a clearinghouse and referral service of information on biotechnology, be established, that the clearinghouse and referral service work in conjunction with other clearinghouses, networks, and information centers, and its existence and purpose be widely publicized.

SEC. 2. Section 15333 of the Government Code is amended to read:

15333. The Office of Business Development shall perform the following functions and activities:

(a) Represent the Secretary of the Business, Transportation and Housing Agency in establishing clear lines of communication with California business.

(b) Advise the director on the problems and concerns of the business community, particularly those unique to California's small businesses.

(c) Review recommendations from the business community and advise the director on proposals affecting business conditions in California.

(d) Act as liaison between the business community and all departments of state government on issues affecting business development and insure that the findings and recommendations of each department are reported to the director.

(e) Cooperate with public and private agencies engaged in promoting and encouraging the location and development of new businesses in the state as well as the maintaining and expanding of

existing businesses.

(f) Aid business concerns in their relationships with appropriate federal and state agencies such as procurement and lending agencies and the Small Business Administration.

(g) Market California as a cost-effective and advantageous place for businesses to locate or expand. This subdivision shall not be construed to require any local government to participate, except in a voluntary manner, in this program.

(h) Establish a clearinghouse and referral service for information on biotechnology research, regulations, product development, and policy issues

This shall include referral to appropriate agencies, inquiries by persons in industry, business, commerce, governmental units, news agencies, academic institutions, or the public concerning biotechnology information.

This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 3. Section 15333 is added to the Government Code, to read:

15333. The Office of Business Development shall perform the following functions and activities:

(a) Represent the Secretary of the Business, Transportation and Housing Agency in establishing clear lines of communication with California business.

(b) Advise the director on the problems and concerns of the business community, particularly those unique to California's small businesses.

(c) Review recommendations from the business community and advise the director on proposals affecting business conditions in California.

(d) Act as liaison between the business community and all departments of state government on issues affecting business development and insure that the findings and recommendations of each department are reported to the director.

(e) Cooperate with public and private agencies engaged in promoting and encouraging the location and development of new businesses in the state as well as the maintaining and expanding of existing businesses.

(f) Aid business concerns in their relationships with appropriate federal and state agencies such as procurement and lending agencies and the Small Business Administration.

(g) Market California as a cost-effective and advantageous place for businesses to locate or expand. This subdivision shall not be construed to require any local government to participate, except in a voluntary manner, in this program.

This section shall become operative on January 1, 1992.

SEC. 4. It is the intent of the Legislature that any costs for complying with subdivision (h) of Section 15333 of the Government Code shall be funded from existing resources of the Department of Commerce.

CHAPTER 712

An act to add Section 14673.7 to the Government Code, relating to state property.

[Approved by Governor September 17, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 14673.7 is added to the Government Code, to read:

14673.7. The Director of General Services, with the concurrence of the Director of Parks and Recreation, shall quitclaim to the County of Los Angeles, at no cost to the county, all interests of the state in the state and county arboretum at 301 North Baldwin Avenue, Arcadia, California, consisting of approximately 111 acres. The county shall develop, maintain, operate, and preserve the land as a botanical garden for public park and recreation use. Natural, historic, and cultural resources existing on the site shall continue to be maintained, preserved, interpreted, and protected for public enjoyment. No change in use of the property from public park and recreation purposes without specific approval of the Director of Parks and Recreation shall be allowed. Upon any breach of these conditions, the state may reenter the property, and upon that reentry, the interest of the County of Los Angeles shall terminate and ownership shall be entirely in the state.

SEC. 2. The Director of General Services, with the concurrence of the Director of Parks and Recreation, is hereby authorized and directed to quitclaim to the County of Los Angeles at no cost to the county, all interest of the state in that property commonly referred to as the Lux Arboretum, consisting of approximately 126 acres lying within the northwest quarter of Section 14, Township 1 North, Range 11 West, San Bernardino Base and Meridian, in the City of Monrovia, County of Los Angeles, State of California. The property is to be used only for public park and recreation purposes. No change in use of the property from public park and recreation purposes without specific approval of the Director of Parks and Recreation shall be allowed. Upon any breach of these conditions, the state may reenter the property, and upon that reentry, the interest of the County of Los Angeles shall terminate and ownership shall be entirely in the state.

SEC. 3. As to any property quitclaimed pursuant to this act, 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, together with the right to prospect for, mine, and remove the deposits. The rights to prospect for, mine, and remove shall be

limited to those areas of property conveyed which the director, after consultation with the State Lands Commission and approval by the County of Los Angeles, determines to be reasonably necessary for the removal of the resources and deposits. Approval of those areas by the County of Los Angeles shall not be unreasonably withheld.

CHAPTER 713

An act to amend Section 1203.1 of, and to add Section 1203.1i to, the Penal Code, relating to probation.

[Approved by Governor September 17, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 1203.1 of the Penal Code as amended by Section 2 of Chapter 15034 of the Statutes of 1985 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 the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those 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 case; however, where the maximum possible term of the sentence is five years or less, then the 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 a sum not to exceed the maximum fine provided by law in the 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 Restitution Fund. 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, provided, that payment need not be forwarded to a victim until 180 days from the date the first such payment is received, if the restitution payments for that victim received by the probation department total less than fifty dollars ($50). 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 180 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 a road camp, farm, or other public work instead of in jail; 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. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county. In all cases of probation the court may 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 them to the probation officer and apply those earnings as directed by the court.

The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code. Any such order made by the court shall be made in accordance with the provisions of Section 1203.1i.

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 his or her 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.

Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

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 that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions

imposed by the court in the 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. However, 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, those of each probationer shall be taken and a record of them kept and preserved.

Notwithstanding any other provisions of law to the contrary, except as provided in Sections 13967 and 13967.5 of the Government Code and Sections 1202.4, 1203.04, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, 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 10 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 of the Penal Code, as amended by Section 5 of Chapter 980 of the Statutes of 1984, 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 the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those 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 case; however, where the maximum possible term of the sentence is five years or less, then the 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 a sum not to exceed the maximum fine provided by law in the 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 Restitution Fund. In counties or cities and counties where road camps, farms, or other public work is available, the court may place the probationer in such a road camp, farm, or other public work instead of in jail. 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. Each county board of supervisors may provide public work and fix the scale of compensation of the adult probationers in that county. 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 them to the probation officer and apply those earnings as directed by the court.

The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code. Any such order shall be made in accordance with the provisions of Section 1203.1i.

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 his or her 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.

Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

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 that breach and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the 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. However, 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, those of each probationer shall be taken and a record of them kept and preserved.

Notwithstanding any other provision of law, except as provided in Sections 13967 and 13967.5 of the Government Code and Sections 1202.4, 1203.04, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, 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. Section 1203.1i is added to the Penal Code, to read:

1203.1i. In any case in which, pursuant to Section 1203.1, the court orders the defendant, as a condition of probation, to make restitution to a public agency for the costs of an emergency response, all of the following shall apply:

(a) The probation department shall obtain the actual costs for an emergency response from a public agency, and shall include the public agency's documents supporting the actual costs for the emergency response in the probation department's sentencing report to the court.

(b) At the sentencing hearing, the defendant has the right to confront witnesses and present evidence in opposition to the amount claimed to be due to the public agency for its actual costs for the emergency response.

(c) The collection of the emergency response costs is the responsibility of the public agency seeking the reimbursement. If a defendant fails to make restitution payment when a payment is due, the public agency shall by verified declaration notify the probation department of the delinquency. The probation department shall make an investigation of the delinquency and shall make a report to the court of the delinquency. The report shall contain any

recommendation that the probation officer finds to be relevant regarding the delinquency and future payments. The court, after a hearing on the delinquency, may make modifications to the existing order in the furtherance of justice.

(d) The defendant has the right to petition the court for a modification of the emergency response reimbursement order whenever he or she has sustained a substantial change in economic circumstances. The defendant has a right to a hearing on the proposed modification, and the court may make any modification to the existing order in the furtherance of justice.

CHAPTER 714

An act to amend Section 643 of, and to add Section 1913.5 to, the Financial Code, relating to financial institutions.

[Approved by Governor September 17, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 643 of the Financial Code is amended to read:

643. Notwithstanding the provisions of Section 642, a bank or a majority-owned subsidiary of a bank may, with the prior approval of the superintendent, make a distribution to the shareholders of such bank in an amount not exceeding the greatest of:

(a) The retained earnings of the bank;

(b) The net income of the bank for its last fiscal year; or

(c) The net income of the bank for its current fiscal year.

SEC. 2. Section 1913.5 is added to the Financial Code, to read:

1913.5. (a) For the purposes of this section, the following definitions are applicable:

(1) "Account holder" includes, in the case of a deposit account, the depositor; in the case of a trust account, each trustor and beneficiary of the trust account; and, in the case of any other fiduciary account, each person who occupies, with respect to the account, a position which is similar to the position that a trustor or beneficiary occupies with respect to a trust account.

(2) "Bank" means the following:

(A) Any commercial bank or trust company incorporated under the laws of this state.

(B) Any foreign banking corporation which is licensed by the superintendent under Chapter 13.5 (commencing with Section 1700) to maintain an office in this state, with respect to any such office.

(C) Any corporation incorporated under the laws of this state which is incorporated for the purpose of engaging in, or which is

authorized by the superintendent to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.

(D) Any foreign corporation which is licensed by the superintendent under Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at that office business under Article 1 (commencing with Section 3500) of Chapter 19 with respect to that office.

(3) "Order" means any approval, consent, authorization, permit, exemption, denial, prohibition, or requirement applicable to a specific case issued by the superintendent, including, without limitation, any condition thereof. "Order" does not include any certificate of authority or license issued by the superintendent but does include any condition of a license and any written agreement made by any person with the superintendent under this division.

(4) "Subject person of a bank" means any director, officer, or employee of the bank, or any person who participates in the conduct of the business of the bank. However, "subject person of a bank" does not include a controlling person of the bank which is registered as a bank holding company with the Board of Governors of the Federal Reserve System pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. Sections 1841, et seq.). "Subject person of a bank" does not include an individual who is a director, officer, or employee of a controlling person of the bank unless the individual is a director, officer, or employee of the bank or participates in the conduct of the business of the bank. For purposes of this paragraph, "controlling person" has the meaning set forth in Section 700.

(5) "Violation" includes, without limitation, any act done, alone or with one or more persons, for or toward causing, bringing about, participating in, counseling, aiding, or abetting a violation.

(b) If, after notice and a hearing, the superintendent finds the following, the superintendent may issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the superintendent:

(1) (A) That the subject person has violated any provision of this division or of any regulation or order issued under this division, or any provision of any other applicable law relating to the business of the bank; or

(B) That the subject person has engaged or participated in any unsafe or unsound act with respect to the business of the bank; or

(C) That the subject person has committed or engaged in any act which constitutes a breach of his or her fiduciary duty as a subject person; and

(2) (A) That the bank has suffered or will probably suffer substantial financial loss or other damage by reason of that violation, act, or breach of fiduciary duty; or

(B) That the interests of the bank's account holders have been or are likely to be seriously prejudiced by reason of the violation, act,

or breach of fiduciary duty; or

(C) That the subject person has received financial gain by reason of such violation, act, or breach of fiduciary duty; and

(3) That the violation, act, or breach of fiduciary duty is one involving personal dishonesty on the part of the subject person, or one which demonstrates a willful or continuing disregard for the safety or soundness of the bank.

(c) If, after notice and a hearing, the superintendent finds the following, the superintendent may issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the superintendent:

(1) That the subject person's conduct or practice with respect to another bank or business institution has resulted in substantial financial loss or other damage; and

(2) That the conduct or practice has evidenced personal dishonesty or willful or continuing disregard for the safety and soundness of the other bank or business institution; and

(3) That the conduct or practice is relevant in that it demonstrates unfitness to continue as a subject person of the bank.

(d) If the superintendent finds the following, the superintendent may immediately issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the superintendent:

(1) That it is necessary for the protection of the bank or the interests of the bank's account holders that the superintendent issue the order immediately; and

(2) (A) That any of the factors set forth in paragraph (1) of subdivision (b), any of the factors set forth in paragraph (2) of subdivision (b), and any of the factors set forth in paragraph (3) of subdivision (b) are true with respect to the subject person; or

(B) That any of the factors set forth in paragraph (1) of subdivision (c), any of the factors set forth in paragraph (2) of subdivision (c), and the factor set forth in paragraph (3) of subdivision (c) are true with respect to the subject person.

(e) (1) If the superintendent finds the following, the superintendent may immediately issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the superintendent:

(A) That the subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime which is punishable by imprisonment for a term

exceeding one year and which involves dishonesty or breach of trust; and

(B) That the person's continuing to serve as a subject person of the bank may pose a material threat to the interests of the bank's account holders or may threaten to materially impair public confidence in the bank. In case the criminal proceedings are terminated other than by a judgment of conviction, the order shall be deemed rescinded.

(2) If the superintendent finds the following, the superintendent may immediately issue an order suspending or removing a subject person of a bank, or a former subject person of a bank, from his or her office, if any, with the bank and prohibiting the person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the superintendent:

(A) That the person has been finally convicted of a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(B) That the person's continuing to serve or resumption of service as a subject person of the bank may pose a material threat to the interests of the bank's account holders or may threaten to materially impair public confidence in the bank.

(3) The fact that any subject person of a bank charged with a crime involving dishonesty or breach of trust is not finally convicted of that crime shall not preclude the superintendent from issuing an order regarding the subject person pursuant to other provisions of this division.

(f) (1) Within 30 days after an order is issued pursuant to subdivision (d) or (e), the person to whom the order is issued may file with the superintendent an application for a hearing on the order. The superintendent shall, upon the written request of the person, extend the 30-day period by an additional 30 days provided the request is filed with the superintendent within 30 days after the order is issued. If the superintendent fails to commence the hearing within 15 business days after the application is filed, or within a longer period to which the person consents, the order shall be deemed rescinded. Within 30 days after the hearing, the superintendent shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any person to whom an order is issued under subdivision (d) or (e) to petition for judicial review of the order shall not be affected by the failure of that person to apply to the superintendent for a hearing on the order pursuant to this subdivision.

(g) (1) Any person to whom an order is issued under subdivision (b), (c), (d), or (e) may apply to the superintendent to modify or rescind that order. The superintendent shall not grant that application unless the superintendent finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when he or she becomes a subject person of a bank,

comply with all applicable provisions of this division and of any regulation or order issued thereunder.

(2) The right of any person to whom an order is issued under subdivision (b), (c), (d), or (e) to petition for judicial review of that order shall not be affected by the failure of the person to apply to the superintendent pursuant to paragraph (1) to modify or rescind the order.

(h) (1) A notice issued under this section shall state the facts constituting the grounds for removal, suspension, or prohibition.

(2) A hearing held before the superintendent pursuant to this section shall be private unless the superintendent, in his or her discretion, after fully considering the view of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest.

(i) (1) It is unlawful for any subject person of a bank or former subject person of a bank to whom an order is issued under subdivision (b), (c), (d), or (e) to do any of the following, except with the prior consent of the superintendent, so long as the order is effective:

(A) To serve or act as a director, officer, employee, or agent of any bank.

(B) To vote any shares or other securities of a bank having voting rights, for the election of any person as a director of the bank.

(C) Directly or indirectly, to solicit, procure, or transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of any bank having voting rights.

(D) Otherwise to participate in any manner in the conduct of the business of any bank.

(2) Any person who violates paragraph (1) shall, upon conviction, be punished by a fine of not more than five thousand dollars ($5,000) or imprisoned in the state prison, or in a county jail not to exceed one year, or by both such fine and imprisonment.

(3) If, after notice and a hearing, the superintendent finds that any person has violated paragraph (1), the superintendent may order that person to pay to the superintendent a civil penalty in an amount as the superintendent may specify; provided, however, that the amount of the civil penalty shall not exceed one thousand dollars ($1,000) for each violation or, in the case of a continuing violation, one thousand dollars ($1,000) for each day for which the violation continues.

In determining the amount of a civil penalty to be paid to the superintendent under this paragraph, the superintendent shall consider the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations by the person, and such other factors as in the opinion of the superintendent may be relevant

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 715

An act to add Section 2955.5 to the Civil Code, relating to mortgages.

[Approved by Governor September 17, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 2955.5 is added to the Civil Code, to read:

2955.5. (a) No lender shall require a borrower under a loan secured by real property to provide hazard insurance coverage on that property in an amount exceeding the replacement value of the improvements on the property as established by the property insurer as selected by the borrower.

(b) Any person harmed by a violation of this section shall be entitled to obtain injunctive relief and may recover damages and reasonable attorney's fees and costs.

(c) A violation of this section does not affect the validity of the loan or the mortgage or deed of trust.

CHAPTER 716

An act to amend Section 3097 of the Civil Code, and to add Section 27361.9 to the Government Code, relating to mechanics' liens.

[Approved by Governor September 17, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 3097 of the Civil Code is amended to read:

3097. "Preliminary 20-day notice (private work)" means a written notice from a claimant that is given prior to the recording of a mechanic's lien and prior to the filing of a stop notice, and is required to be given under the following circumstances:

(a) Except one under direct contract with the owner or one performing actual labor for wages, or an express trust fund described in Section 3111, every person who furnishes labor, service, equipment, or material for which a lien otherwise can be claimed under this title, or for which a notice to withhold can otherwise be given under this title, shall, as a necessary prerequisite to the validity

of any claim of lien, and of a notice to withhold, cause to be given to the owner or reputed owner, to the original contractor, or reputed contractor, and to the construction lender, if any, or to the reputed construction lender, if any, a written preliminary notice as prescribed by this section.

(b) Except the contractor, or one performing actual labor for wages, or an express trust fund described in Section 3111, all persons who have a direct contract with the owner and who furnish labor, service, equipment, or material for which a lien otherwise can be claimed under this title, or for which a notice to withhold can otherwise be given under this title, shall, as a necessary prerequisite to the validity of any claim of lien, and of a notice to withhold, cause to be given to the construction lender, if any, or to the reputed construction lender, if any, a written preliminary notice as prescribed by this section.

(c) The preliminary notice referred to in subdivisions (a) and (b) shall be given not later than 20 days after the claimant has first furnished labor, service, equipment, or materials to the jobsite, and shall contain the following information:

(1) A general description of the labor, service, equipment, or materials furnished, or to be furnished, and if there is a construction lender, he or she shall be furnished with an estimate of the total price thereof in addition to the foregoing.

(2) The name and address of the person furnishing that labor, service, equipment, or materials.

(3) The name of the person who contracted for purchase of that labor, service, equipment, or materials.

(4) A description of the jobsite sufficient for identification.

(5) The following statement in boldface type:

NOTICE TO PROPERTY OWNER

If bills are not paid in full for the labor, services, equipment, or materials furnished or to be furnished, a mechanic's lien leading to the loss, through court foreclosure proceedings, of all or part of your property being so improved may be placed against the property even though you have paid your contractor in full. You may wish to protect yourself against this consequence by (1) requiring your contractor to furnish a signed release by the person or firm giving you this notice before making payment to your contractor or (2) any other method or device which is appropriate under the circumstances.

(6) If the notice is given by a subcontractor who is required pursuant to a collective bargaining agreement to pay supplemental fringe benefits into an express trust fund described in Section 3111, the notice shall also contain the identity and address of the trust fund or funds.

If an invoice for materials contains the information required by this section, a copy of the invoice, transmitted in the manner

prescribed by this section shall be sufficient notice.

A certificated architect, registered engineer, or licensed land surveyor who has furnished services for the design of the work of improvement and who gives a preliminary notice as provided in this section not later than 20 days after the work of improvement has commenced shall be deemed to have complied with subdivisions (a) and (b) with respect to architectural, engineering, or surveying services furnished, or to be furnished.

(d) If labor, service, equipment, or materials have been furnished to a jobsite by a person who elected not to give a preliminary notice as provided in subdivision (a) or (b), that person shall not be precluded from giving a preliminary notice not later than 20 days after furnishing other labor, service, equipment, or materials to the same jobsite. The person shall, however, be entitled to claim a lien and a notice to withhold only for labor, service, equipment, or material furnished within 20 days prior to the service of the notice, and at any time thereafter.

(e) Any agreement made or entered into by an owner, whereby the owner agrees to waive the rights or privileges conferred upon the owner by this section shall be void and of no effect.

(f) The notice required under this section may be served as follows:

(1) If the person to be notified resides in this state, by delivering the notice personally, or by leaving it at his or her address of residence or place of business with some person in charge, or by first-class registered or certified mail, postage prepaid, addressed to the person to whom notice is to be given at his or her residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or at an address recorded pursuant to subdivision (j).

(2) If the person to be notified does not reside in this state, by any method enumerated in paragraph (1) of this subdivision. If the person cannot be served by any of these methods, then notice may be given by first-class certified or registered mail, addressed to the construction lender or to the original contractor.

(3) When service is made by first-class certified or registered mail, service is complete at the time of the deposit of that registered or certified mail.

(g) A person required by this section to give notice to the owner and to an original contractor, and to a person to whom a notice to withhold may be given, need give only one notice to the owner, and to the original contractor and to the person to whom a notice to withhold may be given with respect to all materials, service, labor, or equipment he or she furnishes for a work of improvement, which means the entire structure or scheme of improvements as a whole, unless the same is furnished under contracts with more than one subcontractor, in which event, the notice requirements shall be met with respect to materials, services, labor, or equipment furnished to each contractor.

If a notice contains a general description required by subdivision (a) or (b) of the materials, services, labor, or equipment furnished to the date of notice, it is not defective because, after that date, the person giving notice furnishes materials, services, labor, or equipment not within the scope of this general description.

(h) Where the contract price to be paid to any subcontractor on a particular work of improvement exceeds four hundred dollars ($400), the failure of that contractor, licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, to give the notice provided for in this section, constitutes grounds for disciplinary action by the Registrar of Contractors.

Where the notice is required to contain the information set forth in paragraph (6) of subdivision (c), a failure to give the notice, including that information, that results in the filing of a lien or the delivery of a stop notice by the express trust fund to which the obligation is owing constitutes grounds for disciplinary action by the Registrar of Contractors against the subcontractor if the amount due the trust fund is not paid.

(i) Every city, county, city and county, or other governmental authority issuing building permits shall, in its application form for a building permit, provide space and a designation for the applicant to enter the name, branch, designation, if any, and address of the construction lender and shall keep the information on file open for public inspection during the regular business hours of the authority.

If there is no known construction lender, that fact shall be noted in the designated space. Any failure to indicate the name and address of the construction lender on the application, however, shall not relieve any person from the obligation to give to the construction lender the notice required by this section.

(j) A mortgage, deed of trust, or other instrument securing a loan, any of the proceeds of which may be used for the purpose of constructing improvements on real property, shall bear the designation "Construction Trust Deed" prominently on its face and shall state all of the following: (1) the name and address of the lender, and the name and address of the owner of the real property described in the instrument, and (2) a legal description of the real property which secures the loan and, if known, the street address of the property. The failure to be so designated or to state any of the information required by this subdivision shall not affect the validity of such a mortgage, deed of trust, or other instrument.

Failure to provide this information on this instrument when recorded shall not relieve persons required to give preliminary notice under this section from that duty.

The county recorder of the county in which such an instrument is recorded shall indicate in the general index of the official records of the county that the instrument secures a construction loan.

(k) Every contractor and subcontractor who is required pursuant to a collective bargaining agreement to pay supplementary fringe

benefits into an express trust fund described in Section 3111, and who has failed to do so shall cause to be given to the trust fund and to the construction lender, if any, or to the reputed construction lender, if any, not later than the date the payment due to the trust fund became delinquent, a written notice containing all of the following:

(1) The name of the owner and the contractor.

(2) A description of the jobsite sufficient for identification.

(3) The identity and address of the express trust fund.

(4) The total number of straight time and overtime hours on each job, payment for which the contractor or subcontractor is delinquent to the express trust.

(5) The amount then past due and owing.

Failure to give this notice shall constitute grounds for disciplinary action by the Registrar of Contractors.

(*l*) Every written contract entered into between a property owner and an original contractor shall provide space for the owner to enter his or her name and address of residence; and place of business if any. The original contractor shall make available the name and address of residence of the owner to any person seeking to serve the notice specified in subdivision (c).

(m) Every written contract entered into between a property owner and an original contractor, except home improvement contracts and swimming pool contracts subject to Article 10 (commencing with Section 7150) of Chapter 9 of Division 3 of the Business and Professions Code, shall provide space for the owner to enter the name and address of the construction lender or lenders. The original contractor shall make available the name and address of the construction lender or lenders to any person seeking to serve the notice specified in subdivision (c).

(n) Where one or more construction loans are obtained after commencement of construction, the property owner shall provide the name and address of the construction lender or lenders to each person who has given the property owner the notice specified in subdivision (c).

(o) (1) Each person who has served a preliminary 20-day notice pursuant to subdivision (f) may file the preliminary 20-day notice with the county recorder in the county in which any portion of the property is located. A preliminary 20-day notice filed pursuant to this section shall contain all of the following:

(A) The name and address of the person furnishing the labor, service, equipment, or materials.

(B) The name of the person who contracted for purchase of the labor, service, equipment, or materials.

(C) The common street address of the jobsite.

(2) Upon the acceptance for recording of a Notice of Completion or Notice of Cessation the County Recorder shall mail to those persons who have filed a preliminary 20-day notice, notification that a Notice of Completion or Notice of Cessation has been recorded on the property, and shall affix the date that the Notice of Completion

or Notice of Cessation was recorded with the county recorder.

(3) The failure of the county recorder to mail the notification to the person who filed a preliminary 20-day notice, or the failure of those persons to receive the notification or to receive complete notification, shall not affect the period within which a claim of lien is required to be recorded. However, the county recorder shall make a good faith effort to mail notification to those persons who have filed the preliminary 20-day notice under this section and to do so within five days after the recording of a notice of completion or notice of cessation.

(4) This new function of the county recorder shall not become operative until July 1, 1988. The county recorder may cause to be destroyed all documents filed pursuant to this section, two years after the date of filing.

(5) The preliminary 20-day notice which a person may file pursuant to this subdivision is for the limited purpose of facilitating the mailing of notice by the county recorder of recorded notices of completion and notices of cessation. The notice which is filed is not a recordable document and shall not be entered into those official records of the county which by law impart constructive notice. Notwithstanding any other provision of law, the index maintained by the recorder of filed preliminary 20-day notices shall be separate and distinct from those indexes maintained by the county recorder of those official records of the county which by law impart constructive notice. The filing of a preliminary 20-day notice with the county recorder does not give rise to any actual or constructive notice with respect to any party of the existence or contents of a filed preliminary 20-day notice nor to any duty of inquiry on the part of any party as to the existence or contents of that notice.

SEC. 2. Section 27361.9 is added to the Government Code, to read:

27361.9. The board of supervisors of any county may provide for an additional fee for filing every preliminary 20-day notice pursuant to paragraph (1) of subdivision (o) of Section 3097 of the Civil Code for the exclusive purpose of defraying the cost of implementing and maintaining a system to facilitate compliance with paragraph (2) of subdivision (o) of Section 3097 of the Civil Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 717

An act to amend Section 220 of, to repeal Sections 211, 212, 213, 214, 214.5, 216, 217, and 222 of, and to repeal and add Sections 206, 207, 208, 209, and 210 of, the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

[Approved by Governor September 17, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 206 of the Fish and Game Code is repealed.

SEC. 2. Section 206 is added to the Fish and Game Code, to read:

206. (a) In addition to, or in conjunction with, other regular or special meetings the commission shall, in odd-numbered years, hold meetings in the last 10 days of August and in the first 10 days of the months of October, November, and December for the purpose of considering and adopting revisions to regulations relating to fish, amphibia, and reptiles. The commission shall alternate the locations of the August and December meetings betweeen Los Angeles or Long Beach and Sacramento, and the October and November meetings between San Diego and Redding or Red Bluff.

(b) At the August meeting, the commission shall receive recommendations for regulations from its own members and staff, the department, other public agencies, and the public.

(c) At the October and November meetings, the commission shall devote time for open public discussion of proposed regulations presented at the August meeting. The department shall participate in this discussion by reviewing and presenting its findings regarding each regulation proposed by the public and by responding to objections raised pertaining to its proposed regulations. After considering the public discussion, the commission shall announce, prior to adjournment of the November meeting, the regulations it intends to add, amend, or repeal relating to fish, amphibia, and reptiles.

(d) At the December meeting, the commission may choose to hear additional public discussion regarding the regulations it intends to adopt. At, or within 20 days after, the meeting, the commission shall add, amend, or repeal regulations relating to any recommendation received at the August meeting regarding fish, amphibia, and reptiles it deems necessary to preserve, properly utilize, and maintain each species or subspecies.

(e) Within 45 days after adoption, the department shall publish and distribute regulations adopted pursuant to this section.

SEC. 3. Section 207 of the Fish and Game Code is repealed.

SEC. 4. Section 207 is added to the Fish and Game Code, to read:

207. (a) In addition to, or in conjunction with, other regular or special meetings the commission shall annually hold meetings in the

first 10 days of the months of February, March, and April for the purpose of considering and adopting revisions to regulations relating to mammals. In even-numbered years, the February meeting shall be held in Sacramento, the March meeting shall be held in San Diego, and the April meeting shall be held in Los Angeles or in Long Beach. In odd-numbered years, the February meeting shall be held in Los Angeles or Long Beach, the March meeting shall be held in Redding or in Red Bluff, and the April meeting shall be held in Sacramento.

(b) At the February meeting, the commission shall receive recommendations for regulations from its own members and staff, the department, other public agencies, and the public.

(c) At the March meeting, the commission shall devote time for open public discussion of proposed regulations presented at the February meeting. The department shall participate in this discussion by reviewing and presenting its findings regarding each regulation proposed by the public and by responding to objections raised pertaining to its proposed regulations. After considering the public discussion, the commission shall announce, prior to adjournment of the March meeting, the regulations it intends to add, amend, or repeal relating to mammals.

(d) At, or within 20 days after, the April meeting, the commission may choose to hear additional public discussion regarding the regulations it intends to adopt. At, or within 20 days after, the meeting the commission shall add, amend, or repeal regulations relating to any recommendations received at the February meeting regarding mammals it deems necessary to preserve, properly utilize, and maintain each species or subspecies.

(e) Within 45 days after adoption, the department shall publish and distribute regulations adopted pursuant to this section.

SEC. 5. Section 208 of the Fish and Game Code is repealed.

SEC. 6. Section 208 is added to the Fish and Game Code, to read:

208. (a) In addition to, or in conjunction with, other regular or special meetings, the commission shall annually hold meetings in June and August for the purpose of considering and adopting revisions to regulations relating to resident game birds.

(b) At the June meeting, the commission shall receive recommendations for regulations from its own members and staff, the department, other public agencies, and the public.

(c) At, or within 20 days after, the August meeting, the commission shall devote time for open public discussion of proposed regulations presented at the June meeting. The department shall participate in this discussion by reviewing and presenting its findings regarding each regulation proposed by the public and by responding to objections raised pertaining to its proposed regulations. After considering the public discussion, the commission, at, or within 20 days after, the August meeting, shall add, amend, or repeal regulations relating to any recommendation received at the June meeting regarding resident game birds it deems necessary to

preserve, properly utilize, and maintain each species or subspecies.

(d) Within 45 days after adoption, the department shall publish and distribute regulations adopted pursuant to this section.

SEC. 7. Section 209 of the Fish and Game Code is repealed.

SEC. 8. Section 209 is added to the Fish and Game Code, to read:

209. (a) The commission shall annually determine and give notice of the date and location of each meeting required by Sections 206, 207, and 208 for the following year. The commission shall give the notice at least 60 days prior to the first meeting in any year. The commission shall give notice of any changes in dates and required locations at least 30 days prior to the meeting date.

(b) The commission shall cause to be published the notice required in subdivision (a) in each newspaper of general circulation, as defined in Section 6000 of the Government Code, with an average daily circulation of 50,000 or more.

(c) The commission shall set the dates of its meetings in order to provide maximum time for public review of proposed regulations consistent with the proper management of the species or subspecies affected. All meetings required by Sections 206, 207, and 208 shall be open to the public and, to the extent feasible, held in state facilities.

SEC. 9. Section 210 of the Fish and Game Code is repealed.

SEC. 10. Section 210 is added to the Fish and Game Code, to read:

210. The commission shall provide copies of the regulations added, amended, or repealed pursuant to subdivision (e) of Section 206, subdivision (e) of Section 207, and subdivision (d) of Section 208 to each county clerk, each district attorney, and each judge of a municipal court or justice court in the state.

(b) The commission and the department may do anything that is deemed necessary and proper to publicize and distribute regulations so that persons likely to be affected will be informed of them. The failure of the commission to provide any notice of its regulations, other than by filing them in accordance with Section 215, shall not impair the validity of the regulations.

(c) The department or the license agent may give a copy of the current applicable published regulations to each person issued a license at the time the license is issued.

SEC. 11. Section 211 of the Fish and Game Code is repealed.

SEC. 12. Section 212 of the Fish and Game Code is repealed.

SEC. 13. Section 213 of the Fish and Game Code is repealed.

SEC. 14. Section 214 of the Fish and Game Code is repealed.

SEC. 15. Section 214.5 of the Fish and Game Code is repealed.

SEC. 16. Section 216 of the Fish and Game Code is repealed.

SEC. 17. Section 217 of the Fish and Game Code is repealed.

SEC. 18. Section 220 of the Fish and Game Code is amended to read:

220. (a) Any regulation of the commission added or amended pursuant to this article shall remain in effect for the period specified therein or until superseded by subsequent regulation of the commission or by statute.

(b) Notwithstanding this article, the commission may add, amend, or repeal regulations at any regular or special meeting if facts are presented to the commission which were not presented at the time the original regulations were adopted and if the commission determines that those regulations added, amended, or repealed are necessary to provide proper utilization, protection, or conservation of fish and wildlife species or subspecies.

SEC. 20. Section 222 of the Fish and Game Code is repealed.

CHAPTER 718

An act to amend Sections 24008.5 and 35550 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 17, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 24008.5 of the Vehicle Code is amended to read:

24008.5. (a) No person shall operate any motor vehicle with a frame height or body floor height greater than specified in subdivisions (b) and (c).

(b) The maximum frame height is as follows:

Vehicle Type	Frame Height
(1) Passenger vehicles, except housecars.....	23 inches
(2) All other motor vehicles, including housecars, as follows:	
Up to 4,500 pounds GVWR.....	27 inches
4,501 to 7,500 pounds GVWR	30 inches
7,501 to 10,000 pounds GVWR	31 inches

(c) The lowest portion of the body floor shall not be more than five inches above the top of the frame.

(d) The following definitions govern the construction of this section:

(1) "Frame" means the main longitudinal structural members of the chassis of the vehicle or, for vehicles with unitized body construction, the lowest main longitudinal structural members of the body of the vehicle.

(2) "Frame height" means the vertical distance between the ground and the lowest point on the frame, measured when the vehicle is unladen on a level surface at the lowest point on the frame midway between the front axle and the second axle on the vehicle.

(3) "GVWR" means the manufacturer's gross vehicle weight rating, as defined in Section 390, whether or not the vehicle is

modified by use of parts not originally installed by the manufacturer.

SEC. 2. Section 35550 of the Vehicle Code is amended to read:

35550. (a) The gross weight imposed upon the highway by the wheels on any one axle of a vehicle shall not exceed 20,000 pounds and the gross weight upon any one wheel, or wheels, supporting one end of an axle, and resting upon the roadway, shall not exceed 10,500 pounds, except that the gross weight imposed upon the highway by the wheels on any front steering axle of a motor vehicle shall not exceed 12,500 pounds.

(b) The gross weight limit provided for weight bearing upon any one wheel, or wheels, supporting one end of an axle shall not apply to vehicles the loads of which consist of livestock.

(c) The following vehicles are exempt from the front axle weight limits specified in this section:

(1) Trucks transporting vehicles.

(2) Trucks transporting livestock.

(3) Dump trucks.

(4) Cranes.

(5) Buses.

(6) Transit mix concrete or cement trucks, and trucks that mix concrete or cement at, or adjacent to, a jobsite.

(7) Motor vehicles that are not commercial vehicles.

(8) Vehicles operated by any public utility furnishing electricity, gas, water, or telephone service.

(9) Trucks or truck tractors with a front axle at least four feet to the rear of the foremost part of the truck or truck tractor, not including the front bumper.

(10) Trucks transporting garbage, rubbish, or refuse.

(11) Trucks equipped with a fifth wheel when towing a semitrailer.

(12) Tank trucks which have a cargo capacity of at least 1,500 gallons.

(13) Trucks transporting bulk grains or bulk livestock feed.

(14) State and county weights and measures vehicles used in an official capacity for testing weighing devices pursuant to Division 5 (commencing with Section 12001) of the Business and Professions Code.

(15) Governmental fire service vehicles.

CHAPTER 719

An act to add Section 23240.2 to the Vehicle Code, relating to driving offenses, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 23240.2 is added to the Vehicle Code, to read:

23240.2. Notwithstanding any other requirements for the court to impose a minimum fine contained in Article 2 (commencing with Section 23152) and in order to implement this article, a court in a county selected pursuant to Section 23249 may impose as a condition of probation for any person whose driving privilege is restricted pursuant to Section 23240 that the person pay a fine of not more than one thousand dollars ($1,000), unless the person is convicted of a violation of Section 23153, punishable under Section 23185 or 23190, in which case the court may impose as a condition of probation that the person pay a fine of not more than five thousand dollars ($5,000), which fine is in lieu of the fine prescribed in Article 2 (commencing with Section 23152). The court may consider in determining the amount of the fine to be imposed the cost to the person of installing the ignition interlock device.

This section does not affect any other terms or conditions of probation required by Article 2 (commencing with Section 23152) other than those provisions prescribing minimum fines to be imposed as terms and conditions of probation.

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

In order to provide effective implementation of the Farr-Davis Driver Safety Act of 1986, for the protection of the safety and welfare of the motoring public at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 720

An act to amend Section 1174.3 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 17, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 1174.3 of the Code of Civil Procedure is amended to read:

1174.3. (a) Any occupant not named in the judgment for possession who occupied the premises on the date of the filing of the action may object to enforcement of the judgment against that occupant by filing a claim of right to possession as prescribed in this section. A claim of right to possession may be filed at any time after service or posting of the writ of possession pursuant to subdivision (a) or (b) of Section 715.020, up to and including the time at which the levying officer returns to effect the eviction of those named in the judgment of possession. Filing the claim of right to possession shall constitute a general appearance for which a fee shall be collected as provided in Section 72056 of the Government Code. Section 68511.3 of the Government Code applies to the claim of right to possession.

(b) The court issuing the writ of possession of real property shall set a date or dates when the court will hold a hearing to determine the validity of objections to enforcement of the judgment specified in subdivision (a). An occupant of the real property for which the writ is issued may make an objection to eviction either at the office of the levying officer or at the premises at the time of the eviction.

After a claim of right to possession is completed and presented, the sheriff, marshal, or other levying officer shall forthwith (1) stop the eviction of occupants at the premises, and (2) provide a receipt to the claimant indicating the date and time the completed form was received, and (3) return a copy of the completed claim of right to possession to the court issuing the writ of possession of real property.

(c) The filing of the claim of right to possession is effected by presenting to the sheriff, marshal, or other levying officer a completed form, as prescribed in this section, and transmitting or mailing directly to the court by first-class mail, with proper postage prepaid, and postmarked within 48 hours after its presentation, the appropriate fee or forms for proceeding in forma pauperis. Upon receipt of a claim of right to possession, the sheriff, marshal, or other levying officer shall indicate thereon the date and time of its receipt and forthwith deliver it to the issuing court and notify the plaintiff of that fact. The court shall lodge the claim of right to possession for a period not to exceed seven days after the time of receipt noted by the sheriff, marshal, or other levying officer, at which time the claim shall be denied unless the appropriate fee or the forms for proceeding in forma pauperis have been paid or presented.

Immediately upon receipt of the appropriate fee or forms for proceeding in forma pauperis, the court shall file the claim of right to possession and serve an endorsed copy thereof on the plaintiff and the claimant by first-class mail, postage prepaid.

(d) Upon filing of the claim of right to possession, the court issuing the writ of possession shall set and hold a hearing on the claim not less than five nor more than 15 days after the filing of the claim. At the hearing, the court shall only determine whether there is a valid claim of possession by the claimant who filed the claim, and the court shall consider all evidence produced at the hearing, including, but not limited to, the information set forth in the claim. The court may determine the claim to be valid or invalid based upon the evidence presented at the hearing. The court shall determine the claim to be invalid if the court determines that the claimant is an invitee, licensee, guest, or trespasser.

(e) If, upon hearing, the court determines that the claim is valid, then the court shall order further proceedings as follows:

(1) If the unlawful detainer is based upon a curable breach, and the claimant was not previously served with a proper notice, if any notice is required, then the required notice may at the plaintiff's discretion be served on the claimant at the hearing or thereafter. If the claimant does not cure the breach within the required time, then a supplemental complaint may be filed and served on the claimant as defendant if the plaintiff proceeds against the claimant in the same action. For the purposes of this section only, service of the required notice, if any notice is required, and of the supplemental complaint may be made by first-class mail addressed to the claimant at the subject premises or upon his or her attorney of record and, in either case, Section 1013 shall otherwise apply. Further proceedings on the merits of the claimant's continued right to possession after service of the Summons and Supplemental Complaint as prescribed by this subdivision shall be conducted pursuant to this chapter.

(2) In all other cases, the court shall deem the unlawful detainer Summons and Complaint to be amended on their faces to include the claimant as defendant, service of the Summons and Complaint, as thus amended, may at the plaintiff's discretion be made at the hearing or thereafter, and the claimant thus named and served as a defendant in the action shall answer or otherwise respond within five days thereafter.

(f) If the claim of right to possession is denied pursuant to subdivision (c) or, upon hearing, if the court determines that there are no valid claims or if the claimant does not prevail at a hearing on the merits of the unlawful detainer action, the court shall order the levying officer to proceed with enforcement of the original writ of possession of real property as deemed amended to include the claimant, which shall be effected within a reasonable time not to exceed five days. Upon receipt of the court's order, the levying officer may enforce the writ of possession of real property as against any occupant or occupants.

(g) The claim of right to possession shall be made on the following form:

CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address): TELEPHONE NO:				FOR COURT USE ONLY
ATTORNEY FOR (Name):				
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:				
PLAINTIFF: DEFENDANT:				
CLAIM OF RIGHT TO POSSESSION AND NOTICE OF HEARING				
HEARING DATE:	TIME:	DEPT:	ROOM	CASE NUMBER:

(For levying officer use only)
Completed form was received on
Date: _____ Time: _____
By. _____

Complete this form only if ALL of these statements are true:
1. You are NOT named in the accompanying form called Writ of Possession.
2. You occupied the subject premises on or before the date the unlawful detainer (eviction) action was filed. (The date is in the accompanying Writ of Possession.)
3. You still occupy the subject premises.

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is (specify):
2. I reside at (street address, unit no., city and ZIP code):
3. The address of "the premises" subject to this claim is:
4. On (insert date): _____, the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. (This date is on the accompanying Writ of Possession.)
5. I occupied the subject premises on the date the complaint was filed (the date in item 4). I have continued to occupy the subject premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (the date in item 4).
7. I claim a right to possession of the subject premises because I occupied the premises on the date the complaint was filed (the date in item 4).

CLAIM OF RIGHT TO POSSESSION
AND NOTICE OF HEARING

PLAINTIFF:	CASE NUMBER:
DEFENDANT:	

8. I was not named in the Writ of Possession.
9. I understand that if I make this claim of possession, a court hearing will be held to decide whether my claim will be granted.
10. If I submit this claim form, a COURT HEARING will be held as follows:

(To be completed by the levying officer.)
Date of Hearing: Time: Dept.: Room:

Address of court:

NOTICE: If you fail to appear at this hearing you are likely to be evicted.

11. Rental agreement. I have (check all that apply to you):
    a. ☐ an oral rental agreement with the landlord.
    b. ☐ a written rental agreement with the landlord.
    c. ☐ an oral rental agreement with a person other than the landlord.
    d. ☐ a written rental agreement with a person other than the landlord.
    e. ☐ other (explain):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

WARNING: Perjury is a felony punishable by imprisonment in the state prison.

Date:

. . . . . ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF CLAIMANT)

NOTICE: If your claim to possession is found to be valid, the unlawful detainer action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.

Give this form to the sheriff or marshal or other levying officer at the address on the "Notice to Occupants."

To obtain a court hearing, you must pay a filing fee of: $_____ or file the appropriate form for proceeding in forma pauperis if you cannot pay the fee which must be delivered or mailed directly to the court by first-class mail, with proper postage prepaid, and postmarked within 48 hours after presentation of the claim of right to possession to the levying officer.

CLAIM OF RIGHT TO POSSESSION
AND NOTICE OF HEARING

57040

NOTICE TO OCCUPANTS

If you are not named in the attached writ and if you claim a right to possession of the premises described in the writ based upon the fact that you were in possession on or before the date of filing of the unlawful detainer action, you must act at once.

You must claim a legal right to possession with the sheriff/marshal's office, or you will be removed by sheriff/marshal's deputies or other levying or executing officer(s) at the time of the eviction. To claim your rights, if any, you must complete this form in which you state under penalty of perjury that you were in possession of the subject premises on or before the date of filing of the unlawful detainer action. You can complete and submit the form at the sheriff/marshal's office located at _____ before the date of eviction, or at the premises at the time of the eviction. If you do not complete and submit the form (and pay a filing fee or file the appropriate form for proceeding in forma pauperis if you cannot pay the fee), you will be evicted along with the parties named in the writ.

CLAIM OF RIGHT TO POSSESSION AND NOTICE OF HEARING

57050

CHAPTER 721

An act to amend Sections 800 and 805.5 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 17, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Board of Medical Quality Assurance, the Board of Dental Examiners, the Board of Osteopathic Examiners, the Board of Chiropractic Examiners, the California Board of Registered Nursing, the Board of Vocational Nurse and Psychiatric Technician Examiners, the State Board of Optometry, the Board of Examiners in Veterinary Medicine, and the State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate or similar authority from such board. Each such central file shall be so created and maintained as to provide an individual historical record for each such person with respect to (1) any conviction of a crime in this or any other state which constitutes unprofessional conduct pursuant to the reporting requirements of Section 803; (2) any judgment or settlement requiring him or his insurer to pay any amount of damages in excess of three thousand dollars ($3,000) with respect to any claim that injury or death was proximately caused by such person's negligence, error or omission in practice or rendering of unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802; (3) any public complaints for which provision is hereinafter made, pursuant to subdivision (b) of this section; (4) disciplinary information reported pursuant to Section 805.

(b) Each such board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in or connected with the performance of professional services by such person.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

(c) The contents of any central file which are not public records under any other provision of law shall be confidential except that it may be reviewed (1) by the licensee involved or his or her counsel or representative who may, but is not required to submit any additional exculpatory or explanatory statements or other information, which statements or other information must be included in the file, (2) by any district attorney or representative or

investigator therefor who has been assigned to review the activities of a healing arts licentiate, (3) by any representative of the Attorney General's office or investigator thereof who has been assigned to review the activities of a healing arts licentiate, or (4) by any investigator of the department, or a healing arts board referred to in this section, who has been assigned to review the activities of a healing arts licentiate. Such licensee may, but is not required to submit any additional exculpatory or explanatory statements or other information which statements or other information must be included in the file.

SEC. 2. Section 805.5 of the Business and Professions Code is amended to read:

805.5. (a) Prior to granting or renewing staff privileges for any physician and surgeon, clinical psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or any health care service plan or medical care foundation, or the medical staff of any such institution, shall request a report from the Board of Medical Quality Assurance, the Board of Osteopathic Examiners, or the Board of Dental Examiners to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, clinical psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon, clinical psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.

(b) Upon a request made by, or on behalf of, an institution described in subdivision (a) or its medical staff, which is received on or after January 1, 1980, the board shall furnish a copy of any report made pursuant to Section 805. However, the board shall not send a copy of a report (1) where the denial, removal, or restriction was imposed solely because of the failure to complete medical records, (2) where the board has found the information reported is without merit, or (3) where a period of three years has elapsed since the report was submitted.

In the event that the board fails to advise such institution within 30 working days following its request for a report required by this section, the institution may grant or renew staff privileges for the physician and surgeon, clinical psychologist, podiatrist, or dentist.

(c) Any institution described in subdivision (a) or its medical staff which violates the provisions of subdivision (a) is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200).

CHAPTER 722

An act to amend Section 5458 of, and to add Section 5467 to, the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 17, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 5458 of the Welfare and Institutions Code is amended to read:

5458. The following shall be the programs in the community residential treatment system. These programs shall be designed to provide, at every level, alternatives to institutional settings. Counties in applying for these funds shall show how each of these programs works with the current programs and in-place programs. Counties may apply for funds in the following programs:

(a) A program for a short-term crisis residential alternative to hospitalization for individuals experiencing an acute episode or crisis requiring temporary removal from their home environment. The program shall be available for admissions 24 hours a day, seven days a week. The primary focus of this program shall be on reduction of the crisis, on stabilization, and on a diagnostic assessment of the person's existing support system, including recommendations for referrals upon discharge.

The services in the program shall include, but not be limited to, provision for direct family work, connections to prevocational and vocational programs, and development of a support system, including income and treatment referrals. This program shall be designed for persons who would otherwise be referred to an inpatient unit, either locally or in the state hospital. This program shall place an emphasis on stabilization and appropriate referral for further treatment or support services, or both.

(b) A long-term residential treatment program, with a full day treatment component as a part of the program, for persons who may require intensive support for as long as two or three years. This program shall be designed to provide a rehabilitation program for the so-called "chronic" patient who needs long-term support in order to develop independent living skills. The clients in this program are to be those who would otherwise be living marginally in the community with little or no service support, and who would return many times to the hospital for treatment. It also is to serve those who are referred to, and maintained in, state hospitals or nursing homes because they require long-term, intensive support. This program is to go beyond maintenance to provide an active rehabilitation focus for these individuals.

The services in this program shall include, but not be limited to, intensive diagnostic work, including learning disability assessment,

full day treatment program with an active prevocational and vocational component, special education services, outreach to develop linkages with the general social service system, and counseling to aid clients in developing the skills to move toward a less structured setting.

(c) A transitional residential program designed for persons who are able to take part in programs in the general community, but who, without the support of counseling, as well as the therapeutic community, would be at risk of returning to the hospital. This program may employ a variety of staffing patterns and is for persons who may be expected to move toward a more independent living setting within approximately three months to one year. The clients shall be expected to play a major role in the functioning of the household, and shall be encouraged to accept increasing levels of responsibility, both in the residential community, and in the community as a whole. Residents are required to be involved in daytime activities outside of the house which are relevant to their personal goals and conducive to their achieving more self-sufficiency.

The services in this program include, but are not limited to, counseling and ongoing assessment, development of support systems in the community, a day program which encourages interaction between clients and the community-at-large, and an activity program that encourages socialization and utilization of general community resources.

(d) A program for semisupervised, independent, but structured living arrangement for persons who do not need the intensive support of the other system programs, but who, without some support and structure, are at risk to return to a condition requiring hospitalization. The individual apartments or houses are to be shared by three to five persons. These small cooperative housing units shall function as independent households with direct linkages to staff support in case of emergencies, as well as for regular assessment and evaluation meetings. Individuals may use satellite housing as a transition to independent living, or may remain in this setting indefinitely in order to avoid the need for more intensive settings.

This program is for persons who only need minimum support in order to live in the community. These individuals may require rent subsidy, as well as the backup of another system, in order to remain in this setting. The satellite units are to be as normative as the general living arrangements in the communities in which they are developed.

(e) A program to provide emergency housing or respite care services, or both. These services are designed for persons with a mental disability in need of temporary housing, but who do not require hospitalization or the more intensive support and treatment of the crisis residential program. Services provided shall include, but not be limited to, advocacy, counseling, and linkages to community mental health and other human services, including referrals to

vocational and housing opportunities.

(f) In areas applying for a system where there is no day treatment program, or where the day treatment program is housed totally in a hospital, the county shall be encouraged to develop such a program, consistent with the principles and practices outlined above, in a noninstitutional setting and employing a rehabilitation focus. Where there are already existing services, efforts should be made to assure the capability of such day treatment services with the goals of the system programs. This may require the relocation of such services or the addition of staff.

(g) The program for socialization centers shall be designed to serve a broad range of clients, including those in the system programs, when appropriate, as well as persons living in the community in general. This program is designed to provide regular daytime, evening, and weekend activities for persons who require long-term, structured support, but who do not receive such services in their living setting. Although the socialization center is meant to provide a maintenance support program for those individuals who only wish or require regular socialization opportunities, the programs should also provide the opportunity to develop the skills to move toward more independent functioning.

The services in this program shall include, but not be limited to, outings, recreational activities, cultural events, linkages to community resources, as well as prevocational counseling, life skills training, and other rehabilitation efforts. This program is for persons who would lose contact with a social or treatment system, or both, if left to their isolated living situation, or their ability to participate in activities for the "general public." With this level of support, persons would be able to lead full and active lives, with the opportunity to develop the skills to move toward independent living. Also included in the program are adult education support programs which utilize community college and other adult education agencies. These services would provide opportunities to individuals throughout the community residential treatment system and in other living settings, including independent living, to develop skills necessary for independent living through the utilization of resources available to the general population.

(h) An in-home treatment program designed as an alternative to out-of-home placement for individuals who are otherwise not appropriate for, or do not choose to participate in, other elements of the community residential treatment system. This program is designed for those individuals who would benefit most from a treatment intervention in their home environment. It is a basic premise of this element that treatment focus on the development of family and other personal and community supports, rather than exclusively on the individual. The goal of the program is to reintegrate the individual with the family unit, when appropriate, and with the greater community without removing the person from his or her home environment.

The service may be designed as a crisis intervention for persons experiencing an acute episode or an ongoing independent living service, or both, for persons wishing to obtain or maintain housing and services in the community. Services provided shall include, but not be limited to, crisis intervention, family work, when appropriate, development of a specific treatment plan, development of an ongoing rehabilitation plan utilizing available resources in the community, and coordination with such services as case management, vocational rehabilitation, schools and other education services, and various special programs which would act as a support system for the individual.

(i) A volunteer-based companion program designed to encourage the development of personal relationships with residents of community care facilities with the goal of motivating and assisting residents to make a successful transition to independent living, or to programs of the community residential treatment system.

The service shall be provided primarily by volunteers, including students as a part of a college or university curriculum, who are supervised and coordinated by trained and experienced personnel. Services provided shall include, but not be limited to, recreation, one-to-one companionship, advocacy, and assistance in developing the knowledge and use of community resources, including housing and vocational services, and followup for persons who make the transition to independent living.

(j) A self-help independent living program that utilizes mentally disabled persons living independently in the community to work with clients of the mental health system. Staff for this program shall consist of unpaid volunteers who are or have been clients of the mental health system. Paid staff shall be limited to coordinators of volunteer activities. The duties of the volunteers shall include, but not be limited to, training in independent living skills, housing advocacy and referral, financial benefits counseling, and peer counseling.

(k) A continuum of vocational services which provide at least the three following distinct levels:

(1) Work preparation.

(2) Work experience.

(3) Work placement.

Vocational services shall be designed in the context of a business which provides goods or services to the community. These vocational services shall be transitional in nature and shall include, but not be limited to, counseling and ongoing assessment of the client's vocational performance and goals. The staffing patterns shall include individuals with experience in the type of business or service being provided and persons who have been consumers of mental health services.

This section shall not be construed to limit the services of the Department of Rehabilitation to the mentally disabled.

SEC. 2. Section 5467 is added to the Welfare and Institutions

Code, to read:

5467. (a) The State Department of Mental Health shall develop a long-range plan to implement the program changes necessary to address the service needs of clients aged 21 to 64, inclusive, who are currently served in skilled nursing facilities with state-certified Special Treatment Programs. On or before September 1, 1988, the department shall distribute this plan to all interested parties, including, but not limited to, the Legislature, mental health providers, consumers, and family organizations, as well as entities of county government. In developing the plan, the department shall ensure that the maximum feasible opportunity for public participation.

CHAPTER 723

An act to amend Section 8465 of the Education Code, and to amend Sections 680 and 12522 of the Vehicle Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 8465 of the Education Code is amended to read:

8465. (a) For the 1985–86 fiscal year, the Superintendent of Public Instruction shall make applications for contracts available to interested parties by November 1, 1985. Applicants for extended day care services contracts shall return completed applications to the State Department of Education by January 1, 1986. By February 15, 1986, the Superintendent of Public Instruction shall select and notify those applicants with which he or she will enter into contractual agreements.

The superintendent shall adopt regulations for applications for contracts for the 1986–87 fiscal year, which applications shall contain at least the following:

(1) A description of the agency.

(2) A general description of the community and schools in the area to be served.

(3) A needs assessment, including the number of children in need, classified by age, grade, ethnicity, and socioeconomic status.

(4) A plan for coordination with county welfare departments and resource and referral programs for the provision of services to participants in the program set forth in Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code and to current and former recipients of

benefits under the Aid to Families with Dependent Children program.

(5) A detailed description of the proposed program, including appropriate age group activities, staffing, and facilities.

(6) A detailed budget that demonstrates that the cost of the program is competitive with the cost of local programs that are privately operated.

(7) Evidence of community planning and support.

(8) Any other information deemed necessary to evaluate program quality and cost effectiveness.

(b) The application for funding shall be competitive, in accordance with bidding procedures applicable to contracts under the State Department of Education.

(c) Any applicant with an existing child development contract that evidences noncompliance with fiscal or other program requirements shall be ineligible to apply for funding under this article.

SEC. 2. Section 680 of the Vehicle Code is amended to read:

680. A "youth bus" is any bus, other than a schoolbus, designed for and when actually carrying not more than 16 persons and the driver, used to transport children at or below the 12th-grade level directly from a public or private school to an organized nonschool-related youth activity within 25 miles of the school or directly from a location which provides the organized nonschool-related youth activity to a public or private school within 25 miles of that location.

SEC. 3. Section 12522 of the Vehicle Code is amended to read:

12522. (a) Every person who operates a schoolbus or youth bus in the transportation of school pupils shall, in addition to any other requirement for a schoolbus or youth bus driver's certificate, qualify by an examination on first aid practices deemed necessary for schoolbus operators or youth bus operators. Standards for examination shall be determined by the Emergency Medical Services Authority after consultation with the State Department of Education, the Department of Motor Vehicles, and the Department of the California Highway Patrol. The local school authority employing the applicant shall provide a course of instruction concerning necessary first aid practices.

(b) The California Highway Patrol shall conduct the first aid examination as part of the examination of applicants for a schoolbus or youth bus driver's certificate and shall certify to the Department of Motor Vehicles that the applicant has satisfactorily demonstrated his or her qualifications in first aid practices, knowledge of schoolbus or youth bus laws and regulations, and ability to operate a schoolbus or youth bus. The first aid certifications shall be valid for the term of the schoolbus or youth bus driver's certificate.

(c) The first aid examination shall be waived if the applicant possesses and maintains a current first aid certificate issued by the American Red Cross or United States Bureau of Mines, or a current

license as a physician and surgeon, osteopath, or registered nurse, or a current certificate as a physician's assistant or emergency medical technician throughout the term of the schoolbus or youth bus driver's certificate and presents it upon demand of any traffic officer. The schoolbus or youth bus driver's certificate shall not be valid during any time that the driver fails to maintain and possess that license or certificate after the first aid examination has been waived.

(d) No person shall be denied a schoolbus or youth bus driver's certificate if he or she is in the process of completing a first aid course which will satisfy the requirements of this section. If the course or examination given pursuant to this section is not satisfactorily completed within 90 days from the issuance of the certificate, the certificate becomes invalid on the 91st day after the date of issuance.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 to address the problem of transporting children to day care facilities during the early morning hours as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 724

An act to amend Section 1010 of the Evidence Code, relating to evidence.

[Approved by Governor September 17, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 1010 of the Evidence Code is amended to read:

1010. As used in this article, "psychotherapist" means:

(a) A person authorized, or reasonably believed by the patient to be authorized, to practice medicine in any state or nation who devotes, or is reasonably believed by the patient to devote, a substantial portion of his or her time to the practice of psychiatry.

(b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(c) A person licensed as a clinical social worker under Article 4

(commencing with Section 9040) of Chapter 17 of Division 3 of the Business and Professions Code, when he or she is engaged in applied psychotherapy of a nonmedical nature.

(d) A person who is serving as a school psychologist and holds a credential authorizing such service issued by the state.

(e) A person licensed as a marriage, family and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(f) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code, or a person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(g) A person registered as an apprentice clinical social worker who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist as required by Section 4996.17 of the Business and Professions Code.

CHAPTER 725

An act to amend Sections 2924f and 2924h of the Civil Code, relating to real property.

[Approved by Governor September 17, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 2924f of the Civil Code is amended to read:

2924f. (a) As used in this section and Sections 2924g and 2924h "property" means real property or a leasehold estate therein.

(b) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold, and publishing a copy thereof once a week for the same period, in a newspaper of general circulation published in the city in which the property or

some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district or county, as the case may be, in a newspaper of general circulation published in the county in this state that (1) is contiguous to the county in which the property or some part thereof is situated and (2) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community. Additionally, the notice of sale shall be recorded with the county recorder of the county in which the property or some part thereof is situated at least 14 days prior to the date of sale. The notice of sale shall contain the name, street address, and telephone number of the trustee or other person conducting the sale, and the name of the original trustor, and also shall contain the statement required by paragraph (3) of subdivision (c). In addition to any other description of the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any; but if the property has no street address or other common designation, the notice shall contain the name and address of the beneficiary at whose request the sale is to be conducted and a statement that directions may be obtained pursuant to a written request submitted to the beneficiary within 10 days from the first publication of the notice. Directions shall be deemed reasonably sufficient to locate the property if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If a legal description of the property is given, the validity of the notice and the validity of the sale shall not be affected by the fact that the street address, other common designation, name and address of the beneficiary, or the directions obtained therefrom are erroneous or that the street address, other common designation, name and address of the beneficiary or directions obtained therefrom are omitted. The term newspaper of general circulation as used in this section has the same meaning as defined in Article 1 (commencing

with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code.

The notice of sale shall contain a statement of the total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs, expenses, advances at the time of the initial publication of the notice of sale, and, if republished pursuant to a cancellation of a cash equivalent pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided, that the trustee shall incur no liability for any good faith error in stating the proper amount. An inaccurate statement of this amount shall not affect the validity of any sale to a bona fide purchaser for value, nor shall the failure to post the notice of sale on a door as provided by this subdivision affect the validity of any sale to a bona fide purchaser for value.

(c) (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A

_____ ,

(Deed of trust or mortgage)

DATED _____. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. The trustee may receive offers during the 10-day period immediately prior to the date of sale and if any offer is accepted in writing by both the trustor or mortgagor and the beneficiary or mortgagee prior to the time set for sale, the sale shall be postponed to a date certain and, prior to which the property may be conveyed by the trustor to the person making

the offer according to its terms. The offer is revocable until accepted. The performance of the offer following acceptance, according to its terms by a conveyance of the property to the offeror shall operate to terminate any further proceeding under the notice of sale and it shall be deemed revoked.

(5) In addition to the trustee fee pursuant to Section 2924c, the trustee or mortgagee pursuant to a deed of trust or mortgage subject to this subdivision shall be entitled to charge an additional fee of fifty dollars ($50).

(6) This subdivision applies only to property on which notices of default were filed on or after the effective date of this subdivision.

SEC. 2. Section 2924h of the Civil Code is amended to read:

2924h. (a) Each and every bid made by a bidder at a trustee's sale under a power of sale contained in a deed of trust or mortgage shall be deemed to be an irrevocable offer by that bidder to purchase the property being sold by the trustee under the power of sale for the amount of the bid. Any second or subsequent bid by the same bidder or any other bidder for a higher amount shall be a cancellation of the prior bid.

(b) At the trustee's sale the trustee shall have the right (1) to require every bidder to show evidence of the bidder's ability to deposit with the trustee the full amount of his or her final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee prior to and as a condition to the recognizing of the bid, and to conditionally accept and hold these amounts for the duration of the sale, and (2) to require the last and highest bidder to deposit, if not deposited previously, the full amount of the bidder's final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee, immediately prior to the completion of the sale, the completion of the sale being so announced by the fall of the hammer or in other customary manner. The present beneficiary of the deed of trust under foreclosure shall have the right to offset his or her bid(s) only to the extent of the total amount due the beneficiary including the trustee's fees and expenses.

(c) In the event the trustee accepts a check drawn by a credit union or a savings and loan association pursuant to this subdivision or a cash equivalent designated in the notice of sale, the trustee may withhold the issuance of the trustee's deed to the successful bidder submitting the check drawn by a state or federal credit union or savings and loan association or the cash equivalent until funds

become available to the payee or endorsee as a matter of right.

For the purposes of this subdivision, the trustee's sale shall be deemed final upon the acceptance of the last and highest bid. However, the sale is subject to an automatic rescission for a failure of consideration in the event the funds are not available to the payee or endorsee as a matter of right as defined in subdivision (d) of Section 12413 of the Insurance Code. The trustee shall send a notice of rescission for a failure of consideration to the last and highest bidder submitting the check or alternative instrument, if the address of the last and highest bidder is known to the trustee.

If a sale results in an automatic right of rescission for failure of consideration pursuant to this subdivision, the interest of any lienholder shall be reinstated in the same priority as if the previous sale had not occurred.

(d) If the trustee has not required the last and highest bidder to deposit the cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee in the manner set forth in paragraph (2) of subdivision (b), the trustee shall complete the sale. If the last and highest bidder then fails to deliver to the trustee, when demanded, the amount of his or her final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee, that bidder shall be liable to the trustee for all damages which the trustee may sustain by the refusal to deliver to the trustee the amount of the final bid, including any court costs and reasonable attorneys' fees.

If the last and highest bidder willfully fails to deliver to the trustee the amount of his or her final bid in cash, a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, or a cash equivalent which has been designated in the notice of sale as acceptable to the trustee, or if the last and highest bidder cancels an instrument submitted to the trustee as a cash equivalent, that bidder shall be guilty of a misdemeanor punishable by a fine of not more than two thousand five hundred dollars ($2,500).

In the event the last and highest bidder cancels an instrument submitted to the trustee as a cash equivalent, the trustee shall provide a new notice of sale in the manner set forth in Section 2924f and shall be entitled to recover the costs of the new notice of sale as provided in Section 2924c.

(e) Any postponement or discontinuance of the sale proceedings shall be a cancellation of the last bid.

(f) In the event that this section conflicts with any other statute, then this section shall prevail.

(g) It shall be unlawful for any person, acting alone or in concert with others, (1) to offer to or accept from another any consideration of any type not to bid, or (2) to fix or restrain bidding in any manner, at a sale of property conducted pursuant to a power of sale in a deed of trust or mortgage. In addition to any other remedies, any person committing any act declared unlawful by this subdivision or any act which would operate as a fraud or deceit upon any beneficiary, trustor, or junior lienor shall, upon conviction, be fined not more than ten thousand dollars ($10,000) or imprisoned in the county jail for not more than one year, or be punished by both that fine and imprisonment.

SEC. 3. The changes relating to notice of sale contained in subdivision (b) of Section 2924f of the Civil Code made by this act shall apply only to notices of sale issued on and after July 1, 1988.

CHAPTER 726

An act to add Section 99251 to the Public Utilities Code, and to amend Sections 612, 1808.1, 1812, 12812, 12813, 23168, 34501, 40000.6, and 40508 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 99251 is added to the Public Utilities Code, to read:

99251. No claim submitted by an operator pursuant to this chapter shall be approved unless it is accompanied by a certification completed within the last 13 months from the Department of the California Highway Patrol indicating that the operator is in compliance with Section 1808.1 of the Vehicle Code. The certification may be issued following a terminal inspection, or a terminal reinspection conducted within 60 days thereafter, by the Department of the California Highway Patrol.

SEC. 2. Section 612 of the Vehicle Code is amended to read:

612. "Tour bus" means a bus designed for carrying more than 10 passengers and the driver which is operated by or for a charter-party carrier of passengers, as defined in Section 5360 of the Public Utilities Code.

SEC. 3. Section 1808.1 of the Vehicle Code is amended to read:

1808.1. (a) The prospective employer of a driver who drives a vehicle requiring a certificate issued pursuant to Section 2512, 12517,

12519, 12519.5, 12521, 12523, 12524, 12804.1, or 12804.3 shall obtain a report showing the driver's current public record as recorded by the department.

(b) (1) The employer of a driver who drives a vehicle requiring a certificate issued pursuant to Section 2512, 12517, 12519, 12519.5, 12521, 12523, 12524, 12804.1, or 12804.3 shall make a request to the department to participate in a pull notice system, which is a process for the purpose of providing the employer with a report showing the driver's current public record as recorded by the department, and any subsequent convictions, failures to appear, accidents, driver's license suspensions, driver's license revocations, or any other actions taken against the driving privilege or certificate, added to the driver's record while the employer's notification request remains valid and uncanceled.

(2) Each transit operator, as defined in Section 99210 of the Public Utilities Code, which employs any person as a driver of a bus, shall make a request to the department to participate in a pull notice system, which is a process for the purpose of providing the employer with a report showing the driver's current public record as recorded by the department, and any subsequent convictions, failures to appear, accidents, driver's license suspensions, driver's license revocations, or any other actions taken against the driving privilege or certificate, added to the driver's record while the employer's notification request remains valid and uncanceled.

(c) The employer of a driver of a tour bus requiring a certificate issued pursuant to Section 12519.5 and each transit operator employing bus drivers shall, additionally, obtain a periodic report from the department at least every six months, except that an employer who employs more than 500 drivers shall obtain a report no less than annually. The employer shall verify that each employee's driver's license has not been suspended or revoked, the employee's traffic violation point count, and whether the employee has been charged with a violation of Section 23152 or 23153. The report shall be signed and dated by the employer and maintained at the employer's principal place of business. The reports shall be presented upon demand to any authorized representative of the Department of the California Highway Patrol during regular business hours.

(d) Upon the termination of a driver's employment, the employer shall notify the department to cancel any reports required by this section.

(e) An employer who, after receiving any driving record pursuant to this section, employs or continues to employ as a driver any person against whom a disqualifying action has been taken regarding his or her driving privilege or required driver's certificate, is guilty of a public offense, and upon conviction thereof, shall be punished by imprisonment in the county jail for not more than six months, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(f) As part of its inspection of bus maintenance facilities and terminals required at least once every 13 months pursuant to subdivision (c) of Section 34501, the Department of the California Highway Patrol shall determine whether each transit operator is then in compliance with this section, and shall certify each operator found to be in compliance. No funds shall be allocated under Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code to a transit operator which the Department of the California Highway Patrol has not certified under this section.

(g) A request to participate in the pull notice system established by this section shall be accompanied by a fee determined by the department to be sufficient to defray the entire actual cost to the department for the notification service. For the receipt of subsequent reports, the employer shall also be charged a fee established by the department pursuant to Section 1811. Any employer who qualifies under Section 1812 shall be exempt from any fee required under this section.

SEC. 4. Section 1812 of the Vehicle Code is amended to read:

1812. The department shall not charge for copies of records or for information from its records given to any county, city, any transit operator as defined in Section 99210 of the Public Utilities Code, state department, or the United States government.

SEC. 5. Section 12812 of the Vehicle Code is amended to read:

12812. If a driver with a class 3 or 4 license, who is not required to have a certificate under any provision of this code, is presumed to be a negligent operator pursuant to Section 12810.5, the department may, as a condition of probation, issue a restricted driver's license to permit driving of a vehicle while in the course of the driver's employment during specified hours of employment or any other restrictions as determined by the department. The restrictions shall be noted on the driver's license.

SEC. 6. Section 12813 of the Vehicle Code is amended to read:

12813. (a) The department may, upon issuing a driver's license or after issuance whenever good cause appears, impose restrictions suitable to the licensee's driving ability with respect to the type of, or special mechanical control devices required on, a motor vehicle which the licensee may operate or impose other restrictions applicable to the licensee that the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The department may issue either a special restricted license or may set forth the restrictions upon the usual license form.

(c) The authority of the department to issue restricted licenses under this section is subject to Sections 12812 and 13352.5.

SEC. 7. Section 23168 of the Vehicle Code is amended to read:

23168. (a) Any person, except as provided in subdivision (b), 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.

(b) Regardless of the type of vehicle used in committing the offense, this section shall not apply to persons holding a class 1 or 2 license or to a person holding a class 3 license who is required to have a certificate under any provision of this code.

SEC. 8. Section 34501 of the Vehicle Code, as added by Section 3 of Chapter 969 of the Statutes of 1986, is amended to read:

34501. (a) (1) The department shall adopt reasonable rules and regulations which, in the judgment of the department, are designed to promote the safe operation of vehicles described in Section 34500, regarding, but not limited to, hours of service of drivers, equipment, fuel containers, fueling operations, inspection, maintenance, recordkeeping, accident reports, and drawbridges. The rules and regulations shall not, however, be applicable to schoolbuses, which shall be subject to rules and regulations adopted pursuant to Section 34501.5.

(2) The commissioner shall appoint a committee of 15 members, consisting of representatives of industry subject to the regulations to be adopted pursuant to this section, to act in an advisory capacity to the department, and the department shall cooperate and confer with the advisory committee so appointed. The commissioner shall appoint a separate committee to advise the department on rules and regulations concerning wheelchair lifts for installation and use on buses, consisting of persons who use the wheelchair lifts, representatives of transit districts, representatives of designers or manufacturers of wheelchairs and wheelchair lifts, and representatives of the Department of Transportation.

(3) The department may inspect any vehicles in maintenance facilities or terminals, as well as any records relating to the dispatch of vehicles or drivers, and the pay of drivers, to assure compliance with this code and regulations adopted pursuant to this section.

(b) The department, using the definitions adopted pursuant to Section 2402.7, shall adopt regulations for the transportation of hazardous materials in this state, except the transportation of materials which are subject to other provisions of this code, that the department determines are reasonably necessary to ensure the safety of persons and property using the highways. The regulations may include provisions governing the filling, marking, packing, labeling, and assembly of, and containers that may be used for, hazardous materials shipments, and the manner by which the shipper attests that the shipments are correctly identified and in proper conditions for transport.

(c) At least once every 13 months, the department shall inspect

every maintenance facility or terminal of any person who at any time operates any bus. If the bus operation includes more than 100 buses, the inspection shall be without prior notice.

(d) The commissioner shall adopt and enforce regulations which will make the public or private users of any bus aware of the operator's last safety rating.

(e) It is unlawful and constitutes a misdemeanor for any person to operate any bus without the inspection specified in subdivision (c) having been conducted.

(f) The department may adopt regulations restricting or prohibiting the movement of any vehicle from a maintenance facility or terminal if the vehicle is found in violation of this code or regulations adopted pursuant to this section.

SEC. 9. Section 40000.6 of the Vehicle Code is amended to read:

40000.6. A violation of subdivision (c) of Section 1808.1, relating to drivers required to be certificated pursuant to Section 12519.5, is a misdemeanor and not an infraction.

SEC. 10. Section 40508 of the Vehicle Code is amended to read:

40508. (a) Any person willfully violating his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before a person authorized to receive a deposit of bail is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.

(b) Any person willfully failing to pay a lawfully imposed fine for a violation of any provision of this code or a local ordinance adopted pursuant to this code within the time authorized by the court and without lawful excuse having been presented to the court on or before the date the fine is due is guilty of a misdemeanor regardless of the full payment of the fine after such time.

(c) If a person convicted of an infraction fails to pay a fine or any installment thereof within the time authorized by the court, the court may, except as otherwise provided in this subdivision, impound the person's driver's license and order the person not to drive for a period not to exceed 30 days. Before returning the license to the person, the court shall endorse on the reverse side of the license that the person was ordered not to drive, the period for which that order was made, and the name of the court making the order. If a defendant with a class 3 or 4 driver's license satisfies the court that impounding his or her driver's license and ordering the defendant not to drive will affect his or her livelihood, the court shall order that the person limit his or her driving for a period not to exceed 30 days to driving that is essential in the court's determination to the person's employment, including the person's driving to and from his or her place of employment if other means of transportation are not reasonably available. The court shall provide for the endorsement of the limitation on the person's license. The impounding of the license and ordering the person not to drive or the order limiting the person's driving does not constitute a suspension of the license, but

a violation of the order constitutes contempt of court.

SEC. 11. This act shall become operative on July 1, 1988.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 727

An act to add and repeal Section 6155 of the Business and Professions Code and to amend, add, and repeal Section 43.95 of the Civil Code, relating to civil law.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. The Legislature hereby finds and declares that many of the citizens of the state who are potential consumers of legal services often find it difficult to locate attorneys willing to consult with them for a nominal fee. The Legislature further finds and declares that lawyer referral services are of great value, but that because a potential for abuse exists, referral services should be regulated in order to ensure that those services exist for the true benefit of the public.

SEC. 2. Section 6155 is added to the Business and Professions Code, to read:

6155. (a) An individual, partnership, corporation, association, or any other entity shall not use the term "referral service" or similar terms, if the purpose of the individual, partnership, corporation, association, or entity is to refer potential clients to attorneys, unless all of the following requirements are met:

(1) The service is registered with the State Bar of California and (a) on July 1, 1988, is operated in conformity with minimum standards for a lawyer referral service established by the State Bar, or (b) upon approval by the Supreme Court of minimum standards for a lawyer referral service, is operated in conformity with those standards.

(2) The combined charges to the potential client by the referral service and the attorney to whom the potential client is referred do not exceed the total cost that the client would normally pay if no referral service were involved.

(b) A referral service shall not be owned or operated, in whole or in part, directly or indirectly, by those lawyers to whom, individually or collectively, more than 20 percent of referrals are made. For

purposes of this subdivision, a referral service that is owned or operated by a bar association, as defined in the minimum standards, shall be deemed to be owned or operated by its governing committee so long as the governing committee is constituted and functions in the manner prescribed by the minimum standards.

(c) Neither of the following is a lawyer referral service:

(1) A plan of legal insurance as defined in Section 119.6 of the Insurance Code.

(2) A group or prepaid legal plan, whether operated by a union, trust, mutual benefit or aid association, public or private corporation, or other entity or person, which meets both of the following conditions:

(A) It recommends, furnishes, or pays for legal services to its members or beneficiaries.

(B) It provides telephone advice or personal consultation.

(d) The following are in the public interest and do not constitute an unlawful restraint of trade or commerce:

(1) An agreement between a referral service and a participating attorney to eliminate or restrict the attorney's fee for an initial office consultation for each potential client or to provide free or reduced fee services.

(2) Requirements by a referral service that attorneys meet reasonable participation requirements, including experience, education, and training requirements.

(3) Provisions of the minimum standards as approved by the Supreme Court.

(e) A violation or threatened violation of this section may be enjoined by any person.

(f) With the approval of the Supreme Court, the State Bar shall formulate and enforce rules and regulations for carrying out this section, including rules and regulations which do the following:

(1) Establish minimum standards for lawyer referral services. The minimum standards shall include provisions ensuring that panel membership shall be open to all attorneys practicing in the geographical area served who are qualified by virtue of suitable experience, and limiting attorney registration and membership fees to reasonable sums which do not discourage widespread attorney membership.

(2) Require that an entity seeking to qualify as a lawyer referral service register with the State Bar and obtain from the State Bar a certificate of compliance with the minimum standards for lawyer referral services. A lawyer referral service that, on July 1, 1988, has been authorized by the State Bar shall have a reasonable period, not to exceed six months, after approval of the minimum standards by the Supreme Court to obtain a certificate of compliance.

(3) Require that the certificate may be obtained, maintained, suspended, or revoked pursuant to procedures set forth in the rules and regulations.

(4) Require the lawyer referral service to pay an application and

renewal fee for the certificate in such reasonable amounts as may be determined by the State Bar. The State Bar shall adopt rules authorizing the waiver or reduction of the fees upon a demonstration of financial necessity.

(5) Require each lawyer who is a member of a certified lawyer referral service to possess a policy of errors and omissions insurance in an amount not less than one hundred thousand dollars ($100,000) for each occurrence and three hundred thousand dollars ($300,000) aggregate, per year. By rule, the State Bar may provide for alternative proof of financial responsibility to meet this requirement.

(g) The State Bar of California shall submit the proposed rules and regulations adopted pursuant to this section to the Supreme Court for approval no later than July 1, 1988.

(h) This section shall not be construed to prohibit attorneys from jointly advertising their services.

(i) This section shall become inoperative on July 1, 1993, and, as of January 1, 1994, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1994, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 43.95 of the Civil Code is amended to read:

43.95. (a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society or any nonprofit corporation authorized by the society to operate a referral service, or a nonprofit lawyer referral service registered with the State Bar of California and which conforms to the minimum standards for a lawyer referral service approved by the Supreme Court, or their agents, employees, or members, for referring any member of the public to any professional member of the society or service, or for acts of negligence or conduct constituting unprofessional conduct committed by a professional to whom a member of the public was referred, so long as any of the foregoing persons or entities has acted without malice, and the referral was made at no cost added to the initial referral fee as part of a public service referral system organized under the auspices of the professional society or nonprofit lawyer referral service. Further, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society for providing a telephone information library available for use by the general public without charge, nor against any nonprofit corporation authorized by the society for providing a telephone information library available for use by the general public without charge. "Professional society" includes psychological, architectural, medical, dental, dietetic, accounting, optometric, podiatric, pharmaceutic, chiropractic, veterinary, licensed marriage, family, and child counseling, licensed clinical social work, and engineering organizations having as members at least a majority of the eligible persons or licentiates in the area served by the particular society, or organizations with nonprofit lawyer referral services which are registered with the State Bar of California and conform to the

minimum standards for a lawyer referral service approved by the Supreme Court, and organizations which have been established to provide free assistance or representation to needy patients or clients.

(b) This section shall not apply whenever the professional society, while making a referral to a professional member of the society, or a lawyer referral service registered with the State Bar of California while making a referral to an attorney, fails to disclose the nature of any disciplinary action of which it has actual knowledge taken by a state licensing agency against that professional. However, there shall be no duty to disclose a disciplinary action in either of the following cases:

(1) Where a disciplinary proceeding results in no disciplinary action being taken against the professional to whom a member of the public was referred.

(2) Where a period of three years has elapsed since the professional to whom a member of the public was referred has satisfied any terms, conditions, or sanctions imposed upon such professional as disciplinary action; except that if the professional is an attorney, there shall be no time limit on the duty to disclose.

(c) A nonprofit referral service that, on July 1, 1988, has been authorized by the State Bar of California and determined to be operating in accordance with its minimum standards for a lawyer referral service, shall be afforded the protection conferred by this section against monetary liability for a reasonable period, not to exceed six months, after approval of the minimum standards by the Supreme Court to permit that referral service to apply for reregistration with the State Bar under the approved standards.

(d) This section shall become inoperative on July 1, 1993, and, as of January 1, 1994, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1994, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 43.95 is added to the Civil Code, to read:

43.95. (a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society or any nonprofit corporation authorized by such society to operate a referral service, or their agents, employees, or members, for referring any member of the public to any professional member of such society or service, or for acts of negligence or conduct constituting unprofessional conduct committed by a professional to whom a member of the public was referred, so long as any of the foregoing persons or entities has acted without malice, and the referral was made at no cost added to the initial referral fee as part of a public service referral system organized under the auspices of the professional society. Further, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society for providing a telephone information library available for use by the general public without charge, nor against any nonprofit corporation authorized by such society for providing a telephone information library available for use by the

general public without charge. "Professional society" includes legal, psychological, architectural, medical, dental, dietetic, accounting, optometric, podiatric, pharmaceutic, chiropractic, veterinary, licensed marriage, family, and child counseling, licensed clinical social work, and engineering organizations having as members at least a majority of the eligible persons or licentiates in the area served by the particular society, or organizations with referral services which have been authorized by the State Bar of California and operated in accordance with its Minimum Standards for a Lawyer Referral Service in California, and organizations which have been established to provide free assistance or representation to needy patients or clients.

(b) This section shall not apply whenever the professional society, while making a referral to a professional member of such society, fails to disclose the nature of any disciplinary action of which it has actual knowledge taken by a state licensing agency against that professional member. However, there shall be no duty to disclose a disciplinary action in either of the following cases:

(1) Where a disciplinary proceeding results in no disciplinary action being taken against the professional to whom a member of the public was referred.

(2) Where a period of three years has elapsed since the professional to whom a member of the public was referred has satisfied any terms, conditions, or sanctions imposed upon such professional as disciplinary action; except that if the professional is an attorney, there shall be no time limit on the duty to disclose.

(c) This section shall become operative on July 1, 1993.

SEC. 5. The State Bar shall submit a report to the Legislature on the implementation of the requirements of this act not later than two years after the Supreme Court approves minimum standards for the approval of a lawyer referral service.

CHAPTER 728

An act to amend Sections 20780, 20781, 20785, and 22550.5 of, and to repeal Sections 20784, 20786, 20786.5, 20787, 20788, and 22554.5 of, the Government Code, and to add Section 7007 to the Education Code, relating to public employees.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 20780 of the Government Code is amended to read:

20780. Every state member and every person eligible to membership as a state member covered by the federal-state

agreement providing coverage under the federal system for the member shall be liable for employee federal contributions.

SEC. 2. Section 20781 of the Government Code is amended to read:

20781. Employee federal contributions shall be withheld by the state department or agency that disburses funds in payment of salaries and wages to those members. The department or agency shall transmit to the Old Age and Survivors Insurance Revolving Fund all those employee federal contributions and employer federal contributions. All wage, contribution, and other reports required to fulfill the obligations of the state under the federal system shall be submitted to the appropriate agency as required by federal law. Those agencies and departments are hereby authorized to correct errors and to make any and all adjustments with respect to all covered employees and to the funds from which salary and wage payments and contributions are made as may be required to fulfill the obligations of the state under the federal system in compliance with federal law.

SEC. 3. Section 20784 of the Government Code is repealed.

SEC. 4. Section 20785 of the Government Code is amended to read:

20785. There is hereby appropriated the amount necessary from the funds designated, to provide the payments required by this chapter to be made by the state to the Old Age and Survivors Insurance Revolving Fund, which payments are declared to be continuing obligations of the state.

SEC. 5. Section 20786 of the Government Code is repealed.

SEC. 6. Section 20786.5 of the Government Code is repealed.

SEC. 7. Section 20787 of the Government Code is repealed.

SEC. 8. Section 20788 of the Government Code is repealed.

SEC. 9. Section 22550.5 of the Government Code is amended to read:

22550.5. A school district whose employees in positions covered under a retirement system, as defined in subdivision (c) of Section 22009.1, are included in the agreement, shall be subject to all obligations and liabilities imposed on a public agency under this article.

SEC. 10. Section 22554.5 of the Government Code is repealed.

SEC. 11. Section 7007 is added to the Education Code, to read:

7007. (a) Any qualified organization, as defined in subdivision (b), in cooperation with the Public Employees' Retirement System, may develop a health benefits plan which would be available to persons who are members of those organizations, with equal premiums for both active and retired teachers. The plan would be available, on an optional basis, to each school district, county board of education, and a county superintendent of schools which becomes a contracting agency with the Public Employees' Retirement System pursuant to Section 22857.1 of the Government Code.

(b) "Qualified organization" means an exclusive representative of

the certificated or classified employees, as defined by Section 3540.1 of the Government Code, or any organization with a membership of at least 1,000 members who are retirees of the State Teachers' Retirement System, or any organization with a membership of at least 1,000 members who are faculty members in the California Community Colleges.

(c) This section shall not apply to any contracting agency unless and until the agency elects to be subject to this section pursuant to Section 22857.1 of the Government Code.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 729

An act to add Section 667.75 to the Penal Code, relating to crimes.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 667.75 is added to the Penal Code, to read:

667.75. Any person convicted of a violation of Section 11353, 11353.5, 11361, 11380, or 11380.5 of the Health and Safety Code who has previously served two or more prior separate prison terms, as defined in Section 667.5, for a violation of Section 11353, 11353.5, 11361, 11380, or 11380.5 of the Health and Safety Code, may be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 17 years, or the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, whichever is greatest. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time. No prior prison term shall be used for this determination which was served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. As used in this section, a commitment to the Department of the Youth Authority after conviction for a

felony shall constitute a prior prison term. The term imposed under this section shall be imposed only if the prior prison terms are alleged under this section in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

CHAPTER 730

An act to amend Sections 5500, 5503, 5613, 5614, 5750, 5800, 5801, 5802, 5803, 5804, 5808, 6475, 6556, 7453, 7505, 7700, 8154, 8158, and 8201 of, to add Sections 8501 and 8601 to, and to repeal Section 7700 of, the Financial Code, relating to savings associations.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 5500 of the Financial Code is amended to read:

5500. Within 60 days after issuance of an organizing permit under Article 1 (commencing with Section 5400) any person may request authority to form a capital stock or mutual association by filing with the commissioner three copies of a petition for a certificate of authority and proposed articles of incorporation for stock associations in the format prescribed by the commissioner by regulation or written instructions. This filing shall be in lieu of the requirements of paragraph (1) of subdivision (b) (for stock associations), and also subdivisions (d) and (e) (for mutual associations), of Section 202 of the Corporations Code. The petition shall also be accompanied by three copies of proposed bylaws which shall make provisions for the following:

(a) Annual and special meetings of members or stockholders, and notice of meetings.
(b) Procedure for nomination of directors.
(c) Meetings of board of directors.
(d) Resignation and removal of directors.
(e) Compensation of directors.
(f) Officers.
(g) Execution of instruments.
(h) Evidence of savings accounts.
(i) Corporate seal.
(j) Fiscal year.
(k) Amendments.
(*l*) Disaster preparedness.
(m) Other matters, if any.

The petitioners shall submit with their petitions any applicable filing fee prescribed under Section 9001 and any statements, exhibits, maps, and other data that the commissioner may require by written instruction in a form which is sufficiently detailed and comprehensive to enable the commissioner to make a decision on the petition based on the criteria set out in Section 5502.

SEC. 2. Section 5503 of the Financial Code is amended to read:

5503. (a) The commissioner shall, within a reasonable time after the petition is filed, or within a reasonable time after the hearing, if one is held, either approve or deny the petition for a certificate of authority.

(b) If approved, the commissioner shall issue a certificate of approval of the articles of incorporation of the association and shall issue a notice of conditional approval of the petition for a certificate of authority. Upon satisfaction of all of the conditions in the notice, the commissioner shall execute and issue to the association a certificate of authority.

(c) If denied, upon written request of any petitioner, the commissioner shall provide the statutory reason for denial. Denial of the petition is a final decision and the petitioner shall not be entitled to any further administrative remedy. The petitioner shall discontinue the use of the reserved name and provide evidence to the commissioner that the Secretary of State has been notified to release the name reservation.

SEC. 3. Section 5613 of the Financial Code is amended to read:

5613. (a) No association shall sell, except upon a sale for a delinquent assessment made in accordance with the provisions of the General Corporation Law, or offer for sale, or take subscriptions for, or issue any of its stock (except stock dividends), until the association has applied for and obtained from the commissioner a permit authorizing it to sell capital stock.

(b) Notwithstanding subdivision (a), an association may enter into stock sale agreements with accredited investors (as defined in Section 230.215 of the Securities Exchange Commission regulations) or persons approved by the commissioner prior to obtaining a stock permit.

(c) The commissioner may, by regulation, instruction, or order exclude certain transactions from the operation of this section.

SEC. 4. Section 5614 of the Financial Code is amended to read:

5614. (a) Except as provided in subdivision (b), no issued and outstanding stock of an association shall be sold or offered for sale to the public, nor shall subscriptions be solicited or taken for those sales, until the association or the selling stockholders have applied for and obtained from the commissioner a permit authorizing the sale of the capital stock.

(b) Subdivision (a) shall not apply to any of the following:

(1) An offering involving less than 10 percent of the issued and outstanding capital stock of an association and less than five hundred thousand dollars ($500,000).

(2) An offering made under a registration statement filed under the Securities Act of 1933.

(3) Any offering exempted by regulation, instruction, or order issued in writing by the commissioner.

SEC. 5. Section 5750 of the Financial Code is amended to read:

5750. (a) Pursuant to a plan or agreement (referred to as "agreement" in this article) adopted by the board of directors and approved by the commissioner as fair, just and equitable, and as adequately protecting the interests of the association, its members, or stockholders, its savings account holders and the public, an association shall have the power to reorganize or to merge or consolidate with or transfer all or substantially all its assets to another association or federal association, or any other corporation, provided that the principal terms of the plan of the reorganization, merger, consolidation, or transfer shall, in the case of a stock association, be approved at an annual meeting or at any special meeting, or by the written consent of the stockholders voting on the action, by not less than a majority of the total number of votes eligible to be cast. In the case of a mutual association, if required by the commissioner, the principal terms of such a plan shall be approved by members representing not less than a majority of the voting power.

(b) In all cases the survivor association shall succeed to all the rights, obligations, and relations of the constituent associations.

(c) As a step in a plan of the reorganization, merger, consolidation, or transfer under this section, an interim corporation may be formed. As used in this section, "interim corporation" means a corporation formed to facilitate the acquisition of 100 percent of the voting stock of an existing association or other insured stock institution by or for a newly formed company or an existing savings and loan holding company or to facilitate any other transaction the commissioner may approve.

SEC. 6. Section 5800 of the Financial Code is amended to read:

5800. For the purposes of this article the following words and phrases shall have the following meanings:

(a) "Savings and loan holding company" means any person that either, directly or indirectly, or acting in concert with one or more other persons:

(1) Owns, controls, or holds with power to vote, or holds proxies to vote:

(A) Where the association or savings and loan holding company has fewer than 500 stockholders or members, 25 percent or more of the outstanding voting capital stock of any capital stock association or savings and loan holding company or 25 percent or more of the total number of votes or proxies of votes eligible to be cast by the members of any mutual association located in this state.

(B) Where the association or savings and loan holding company has at least 500 stockholders or members, 10 percent or more of the outstanding voting capital stock of any capital stock association or savings and loan holding company or 10 percent or more of the total

number of votes or proxies of votes eligible to be cast by the members of any mutual association located in this state.

(2) Controls in any manner, whether by the holding of proxies or otherwise, the election of a majority of the directors of any association or savings and loan holding company located in this state.

(b) Notwithstanding subdivision (a), an individual or group of individuals shall not be deemed to be a "savings and loan holding company" solely because an individual or group of individuals solicits, holds, or votes proxies in an association if, at the time of receiving the proxies, the individual or group of individuals serve as directors of the association and solicited or received the proxies pursuant to authorization by the board of directors of the association.

(c) "Subsidiary" of a person means any person, except an individual that is directly or indirectly owned, controlled, or otherwise held by that person to the extent or in the manner described in the preceding subdivision.

(d) "Completed application" means an application for acquisition of control of an association, as filed with the commissioner, together with any amendments by the applicant, additional information requested in writing by the commissioner, and accompanied by the applicable filing fee pursuant to Section 9001. If the additional required information is not received within 30 days of the date of the request, the commissioner may consider the application complete upon written notice to the applicant.

SEC. 7. Section 5801 of the Financial Code is amended to read:

5801. (a) Except as provided in subdivision (b), no person may become a savings and loan holding company, or thereafter register under Section 5804, unless the commissioner approves a completed application. The application shall be in a form prescribed by the commissioner, contain the following information and any additional information that the commissioner may determine by regulation or by written instructions to be necessary or appropriate to preserve the public interest, the integrity of the state's savings association system, and to protect the interests of savings account holders, borrowers, and stockholders resident in this state:

(1) The identity, experience, and financial and managerial resources of each acquiring person by whom or on whose behalf the application is made.

(2) The terms, conditions, and method of any proposed acquisition, including copies of all tender offers used or to be used in connection with any proposed acquisition of capital stock.

(3) The source, kind, and amount of the consideration used or to be used in making the acquisition, and, if any part of the consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction and the names of all participating persons.

(4) Any plans or proposals that any acquiring person may have to liquidate or convert the association or savings and loan holding company, to sell its assets or merge it with any company, to change

the number of its employees in this state or the terms and conditions of their employment, or to make any other substantial change in its business, corporate structure, management or employees upon becoming a holding company.

(5) The names of those officers and directors that the acquiring person proposes to install in any change of managements, and for each of those officers and directors a financial statement, a description of experience in savings association related matters, and a statement as to whether the officer or director ever has been found guilty of misrepresentation, fraud, or financial misdealings.

(6) If any tender offer, request or invitation for tenders or other agreement to acquire control is proposed to be made by means of a registration statement under the federal Securities Act of 1933, as amended, or in circumstances requiring the disclosure of similar information under the federal Securities Exchange Act of 1934, as amended, or in an application filed with the Federal Home Loan Bank Board requiring similar disclosure, that registration statement or application may be filed with the commissioner in lieu of the requirements of this section.

(b) The commissioner may exempt any transaction from the operation of this section if the commissioner determines that regulation of the transaction is not necessary or appropriate.

SEC. 8. Section 5802 of the Financial Code is amended to read:

5802. The commissioner shall within 60 days after the date of filing of a completed application, unless good cause is shown why a decision to approve or deny could not be made within 60 days, approve the application with any conditions reasonably necessary or advisable in the public interest, or deny the application. The commissioner shall determine whether the following criteria are met, and if the criteria are not met, the application shall be denied:

(a) The acquisition, under any federal or state law, will not substantially lessen competition and will not in any manner be in restraint of trade or result in a monopoly, or be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the savings association business in any part of the state unless the commissioner finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest in meeting the convenience and needs of the community that the association serves.

(b) The financial condition of any acquiring person will not jeopardize the financial stability of the association or the savings and loan holding company sought to be acquired and will not prejudice the interest of the savings account holders, borrowers, or stockholders of the association and is in the public interest.

(c) The plan or proposal under which the acquiring person intends to liquidate the savings association or the savings and loan holding company, to sell its assets or to merge it with any person or association, or to make any other major change in its business or corporate structure or management, is fair and reasonable to the

association, its savings account holders, borrowers, and resident stockholders, and will not tend to impair the integrity of the state's savings association system, and is in the public interest.

(d) The competence, experience, integrity, and resources of any acquiring person indicate that approval would be in the interest of the association, its savings account holders, borrowers, and resident stockholders and of the community that the association serves.

(e) The requirements of this article have been met.

(f) The acquisition would not violate state or federal law and the commissioner determines that approval is in the public interest.

(g) The applicant has provided all information requested by the commissioner.

SEC. 9. Section 5803 of the Financial Code is amended to read:

5803. (a) After the decision under this article by the commissioner either approving or denying the application, upon the filing with the commissioner within 30 days after the date of the decision of a written request for a hearing by any person aggrieved by the decision, the commissioner shall hold a public hearing on the merits of the request, after which the decision shall be affirmed, modified, or reversed.

(b) The commissioner shall have authority to amend, suspend, or revoke an approval of the application for acquisition of control upon failure of the applicant to meet the conditions of the approval, or upon a finding that the approval was based on false statements, misrepresentations, or omission of material facts.

SEC. 10. Section 5804 of the Financial Code is amended to read:

5804. (a) Within 60 days following approval, or a later date if extended by the commissioner, each savings and loan holding company shall register with the commissioner in a prescribed form which shall require information with respect to the financial condition, ownership, operations, management, and intercompany relationships of the savings and loan holding company and its subsidiaries, and related matters as the commissioner may deem necessary or appropriate.

(b) The registration shall automatically expire if the approval of the application for acquisition of control is revoked or suspended or the person ceases to be a savings and loan holding company.

(c) The commissioner shall be notified in writing by a registered savings and loan holding company upon any change in its beneficial or legal ownership of stock of an association.

SEC. 11. Section 5808 of the Financial Code is amended to read:

5808. No association that is a subsidiary in this state of any savings and loan holding company that does not have in effect a certificate of registration for that association as required by this article or whose holding company has failed to comply with (1) an order of a court made in respect to the provisions of this division or (2) an order of the commissioner under Section 8200, shall knowingly, without consent of the commissioner, do any of the following:

(a) Transfer or register stock or other securities on its books for

or issue certificates to its holding company.

(b) Pay dividends on stock of which its holding company is the record or beneficial owner.

(c) Permit the voting of stock owned or controlled by its holding company.

(d) Make any other payments of any nature to its holding company.

(e) Enter into any agreement, contract, or transaction with its holding company.

SEC. 12. Section 6475 of the Financial Code is amended to read:

6475. (a) Each association shall maintain an adequate statutory net worth appropriate for the conduct of its business and the protection of its savings account holders.

(b) The commissioner shall fix a minimum statutory net worth requirement applicable to all associations, which shall not be less than 3 percent of an association's total assets. In defining total assets, the commissioner may issue regulations to exclude from the total asset figure any asset items deemed appropriate by the commissioner. For the purpose of computing total assets as of any given date, an association at its option may use the average of total assets as of the end of the preceding calendar year and the total assets of the association at the end of any one or more, up to four, of the immediately preceding calendar years providing all the dates are consecutive.

(c) If the statutory net worth falls below the level specified by the commissioner, the commissioner may require the association to increase its statutory net worth within the time and in a manner designated by the commissioner, so as to bring the amount to the level determined adequate under this section, and may, in addition, require the association to do any one or more of the following:

(1) Increase its liquid assets and maintain that increased liquidity at the level specified by the commissioner.

(2) Cease to:

(A) Accept savings accounts of all classes or categories, except in exchange for accounts already outstanding.

(B) Accept savings accounts of any particular class, category, or amount.

(C) Receive additional funds upon savings accounts already outstanding other than installment accounts.

The provisions of paragraph (2) of subdivision (c) shall not prevent an association from crediting to savings accounts the interest earned on the accounts.

(3) Cease all lending, lending in a particular area, or making a particular type or category of loans.

(4) Cease purchase of loans or other investments.

(5) Cease or limit promotional expenditures.

(6) Convene a meeting or meetings of its board of directors with the commissioner in attendance to accomplish the objectives of this section.

(7) Take any other steps that the commissioner deems necessary to safeguard the interests of the association and the public.

SEC. 13. Section 6556 of the Financial Code is amended to read:

6556. (a) Upon review of the application for a branch office or agency and after a hearing on the branch application, if one is deemed necessary, the commissioner shall determine whether all of the following criteria are met:

(1) The applicant's policies, financial condition, and operations afford no basis for supervisory objection.

(2) The proposed branch office or agency will be opened within a reasonable time after approval, as determined by the commissioner.

(b) If the commissioner determines that the criteria set forth in subdivision (a) are met the application shall be approved.

(c) If the commissioner determines that the criteria set forth in subdivision (a) are not met the application shall be denied.

SEC. 14. Section 7453 of the Financial Code is amended to read:

7453. (a) An association may make, invest in, sell, purchase, participate in, or otherwise deal in secured or unsecured loans for agricultural, business, commercial, or corporate purposes, provided that the total investment in such loans does not exceed 10 percent of the assets of the association.

(b) An association may invest in, sell, purchase, participate in, or otherwise deal in loans specified in subdivision (a) which are originated by any savings association, federal association, holding company of a federally insured savings association, commercial bank, bank holding company, subsidiary of a bank holding company, or insurance company, provided that the total investment in such loans shall not exceed 10 percent of the association's assets.

(c) For the purposes of this section, the term "loan" includes, but is not limited to, any "corporate debt security" as defined under Section 5105.8.

(d) No association shall make, invest in, purchase, or participate in a loan for agricultural, business, commercial, or corporate purposes to one borrower, except as the commissioner may approve in writing, if the sum of the amount of the association's interest in the loan and the total balance of the association's interest in all outstanding loans for those purposes owed to the association by that borrower exceed the greater of (1) the amount a national bank having an identical total capital and surplus could lend to one borrower, or (2) the amount a commercial bank, as defined in Section 105, having an identical total shareholders' equity, capital notes, and debentures, could lend to one borrower. This subdivision shall not apply to loans (1) secured by real property, (2) sold without recourse, (3) on the security of the association's deposit accounts, or (4) of unsecured day funds, including federal funds or similar unsecured loans.

(e) As used in this section the term "one borrower" means:

(1) Any person that is, or upon the making of a loan will become,

an obligor on the loans. However, a guarantor shall not be included within the meaning of "obligor" if, in connection with a loan the association has determined, in good faith, that the primary obligor has qualified for the loan irrespective of the existence of the guarantor. In the case of a loan that has been assumed by a third party with the consent of the association, the former debtor and any guarantor shall not be deemed to be an "obligor."

(2) Nominees of the obligor.

(3) All persons, trusts, syndicates, partnerships and corporations of which the obligor is a nominee, a beneficiary, a member, a general partner, a limited partner owning an interest of 10 percent or more based on the value of his or her capital contribution, or a record or beneficial stockholder owning 10 percent or more of the capital stock.

(4) If the obligor is a trust, syndicate, partnership or corporation, all trusts, syndicates, partnerships and corporations of which any beneficiary, member, general partner, limited partner owning an interest of 10 percent or more based on the value of his or her capital contribution, or record or beneficial stockholder owning 10 percent or more of the capital stock, is also a beneficiary, member, general partner, limited partner owning an interest of 10 percent or more based on the value of his or her capital contribution, or record or beneficial stockholder owning 10 percent or more of the capital stock of the obligor.

(f) This section does not apply to loans to an association's service corporation or to a wholly owned subsidiary.

SEC. 15. Section 7505 of the Financial Code is amended to read:

7505. (a) Notwithstanding any other provision of law, an association may originate, invest in, sell, purchase, service, participate, or otherwise deal in loans (including construction loans) on the security of real property for primarily residential (other than a one- to four-unit dwelling) or nonresidential use, subject to the limitations of this article.

(b) An association's aggregate investment in real property loans for primarily nonresidential use under this section shall not exceed 40 percent of assets.

SEC. 16. Section 7700 of the Financial Code, as added by Section 8 of Chapter 225 of the Statutes of 1984, is repealed.

SEC. 17. Section 7700 of the Financial Code, as added by Section 32 of Chapter 287 of the Statutes of 1984, is amended to read:

7700. (a) An association may invest in tangible personal property, including without limitation, vehicles, mobilehomes, machinery, equipment, or furniture, and may hold the property for rental or sale.

(b) Investment under this section is limited to not in excess of 10 percent of the total assets of the association.

SEC. 18. Section 8154 of the Financial Code is amended to read:

8154. (a) Whenever, in the judgment of the commissioner, the condition of any association, savings and loan holding company, or

any of their subsidiaries renders it necessary or expedient to make an extra examination or audit or to devote any extraordinary attention to its affairs, the commissioner shall do so or may appoint a certified public accountant or any expert to do so.

(b) The association specially examined under this section may be required to pay the actual expenses incurred by the commissioner for all extra services rendered by the commissioner, by the appointed accountant, or any expert.

SEC. 19. Section 8158 of the Financial Code is amended to read:

8158. (a) The commissioner, or any department employee authorized by the commissioner, shall have free access to all books and records of an association, savings and loan holding company, and any of their subsidiaries that relate to the business of the association, holding company, or subsidiary, and to the books and records kept by any officer, agent, or employee that relate to the business of the association, holding company, or subsidiary.

(b) The commissioner, or any department employee authorized by the commissioner, may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, agents, or employees of any association, savings and loan holding company, any of their subsidiaries, or any other person, in relation to their affairs, transactions, and conditions, and may require and compel the production of records, books, papers, contracts, or other documents by court order, if not voluntarily produced.

(c) This section applies to all parties designated in subdivisions (a) and (b) when an association is placed in conservatorship or receivership.

SEC. 20. Section 8201 of the Financial Code is amended to read:

8201. (a) The commissioner may require that any director, officer, or employee of an association, savings and loan holding company, or any of their subsidiaries, who has participated in a violation or an unsafe or unsound practice as described in Section 8200 or who has breached his or her fiduciary duty, be removed from the association or other person if the action of the individual or individuals concerned was knowingly and willfully taken.

(b) Prior to issuance of an order of removal, the commissioner shall deliver a full statement of the objectionable acts and conduct to the board of directors of the association or other person and the individual or individuals concerned and of the commissioner's intention to enter a removal order. If a hearing on the matter is requested within 10 days after delivery of the statement, the commissioner shall hold a public hearing at which any pertinent evidence relating to the matters set forth in the statement may be presented. After the hearing, the commissioner, on the basis of the evidence presented at the hearing, may proceed to enter an order for the immediate removal of the director, officer, or employee affected, a reprimand of the individuals and association or other person concerned, or a dismissal of the entire matter.

(c) If no hearing is requested within the time specified, the

commissioner may proceed to issue an order of removal on the basis of the facts set forth in the original statement.

(d) No director, officer, or employee who has been removed from his or her position pursuant to a removal order that has become final, shall thereafter participate in any manner in the conduct of the affairs of the association or other person from which that director, officer, or employee was removed, or without prior written approval of the commissioner, serve as a director, officer, or employee of any other association or service corporation of an association.

(e) In respect to any officer, director, or employee of an association or service corporation thereof who is the subject of a statement delivered by the commissioner pursuant to subdivision (b), the commissioner may, if the commissioner deems it necessary for the protection of the association or service corporation, by written notice to that effect served upon the officer, director, or employee, suspend him or her from office or prohibit him or her from further participation in any manner in the conduct of the affairs of the association or service corporation, or take both these actions. The suspension or prohibition shall become effective upon service of the notice and, unless stayed by a court in proceedings authorized by subdivision (f), shall remain in effect pending completion of the proceedings pursuant to the statement delivered under subdivision (b) and until the effective date of an order entered by the commissioner under subdivision (b) or subdivision (c). Copies of the notice shall also be served upon the association or service corporation of which the person is a director, officer, or employee.

(f) Within 10 days after any director, officer, or employee has been suspended from office or prohibited from participation in the conduct of the affairs of an association or service corporation thereof under subdivision (e), the director, officer, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings pursuant to subdivision (b), and the court shall have power to stay the suspension or prohibition.

SEC. 21. Section 8501 is added to the Financial Code, to read:

8501. No director of a federal association shall be liable for monetary damages to the federal association, its stockholders or members, based upon the laws of this state, to the extent that the stockholders, or in case of a mutual federal association the members of the federal association, adopt a resolution limiting liability. The resolution shall not eliminate or limit the liability of directors for any acts or omissions or transactions from which directors of a corporation may not be relieved of liability as set forth in the exception to paragraph (10) of Section 204 of the Corporations Code.

SEC. 22. Section 8601 is added to the Financial Code, to read:

8601. No director of a federal association shall be liable for monetary damages to the federal association, its stockholders or members, based upon the laws of this state, to the extent that the stockholders, or in case of a mutual federal association the members

of the federal association, adopt a resolution limiting liability. The resolution shall not eliminate or limit the liability of directors for any acts or omissions or transactions from which directors of a corporation may not be relieved of liability as set forth in the exception to paragraph (10) of Section 204 of the Corporations Code.

SEC. 23. Section 21 of this act shall become operative only if (1) either Assembly Bill 1530 or Assembly Bill 1868 or both are enacted to take effect on or before January 1, 1988, amending Section 204 of the Corporations Code, and (2) Senate Bill 295 is enacted to take effect on or before January 1, 1988, repealing and adding Chapter 8 (commencing with Section 8500) of Division 2 of the Financial Code.

SEC. 24. Section 22 of this act shall become operative only if (1) either Assembly Bill 1530 or Assembly Bill 1868 or both are enacted to take effect on or before January 1, 1988, amending Section 204 of the Corporations Code, and (2) Senate Bill 295 is not enacted.

CHAPTER 731

An act to amend Section 1307 of, and to repeal Section 1317 of, the Military and Veterans Code, relating to veterans, and making an appropriation therefor.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 1307 of the Military and Veterans Code is amended to read:

1307. The commission shall notify the Governor when construction of the memorial has been completed. This chapter shall remain in effect only until, and shall be repealed on, January 1 of the second year following that notification.

SEC. 2. Section 1317 of the Military and Veterans Code is repealed.

CHAPTER 732

An act to amend Section 2872 of, and to add Section 2876 to, the Public Utilities Code, relating to telephones.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 2872 of the Public Utilities Code is amended to read:

2872. (a) The connection of automatic dialing-announcing devices to a telephone line is subject to this article and to the jurisdiction, control, and regulation of the commission.

(b) No person shall operate an automatic dialing-announcing device except in accordance with this article. The use of such a device by any person, either individually or acting as an officer, agent, or employee of a person or corporation operating automatic dialing-announcing devices, is subject to this article.

(c) No person shall operate an automatic dialing-announcing device in this state to place a call which is received by a telephone in this state during the hours between 9 p.m. and 9 a.m. California time.

(d) This article does not prohibit the use of an automatic dialing-announcing device by any person exclusively on behalf of any of the following:

(1) A school for purposes of contacting parents or guardians of pupils regarding attendance.

(2) An exempt organization under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) for purposes of contacting its members.

(3) A privately owned or publicly owned cable television system for purposes of contacting customers or subscribers regarding the previously arranged installation of facilities on the premises of the customer or subscriber.

(4) A privately owned or publicly owned public utility for purposes of contacting customers or subscribers regarding the previously arranged installation of facilities on the premises of the customer or subscriber or for purposes of contacting employees for emergency actions or repairs required for public safety or to restore services.

(5) A petroleum refinery, chemical processing plant, or nuclear powerplant for purposes of advising residents, public service agencies, and the news media in its vicinity of an actual or potential life-threatening emergency.

(e) This article does not apply to any automatic dialing-answering device which is not used to randomly or sequentially dial telephone

numbers but which is used solely to transmit a message to an established business associate, customer, or other person having an established relationship with the person using the automatic dialing-answering device to transmit the message, or to any call generated at the request of the recipient.

(f) The commission may determine any question of fact arising under this section.

SEC. 2. Section 2876 is added to the Public Utilities Code, to read:

2876. Any person violating this article is guilty of a civil offense and is subject to either or both of the following penalties:

(a) A fine of not to exceed five hundred dollars ($500) for each violation, levied and enforced by the commission, on complaint or on its own motion, pursuant to Chapter 11 (commencing with Section 2100) of Part 1.

(b) Disconnection of telephone service to the automatic dialing-announcing device for a period of time which shall be specified by the commission.

CHAPTER 733

An act to add Sections 10.5, 12597, and 12598 to the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 10.5 is added to the Food and Agricultural Code, to read:

10.5. It is unlawful for any person to alter any record or document in the office of a commissioner required to be filed pursuant to any provision of this code or pursuant to rules and regulations authorized by this code, without the approval of the commissioner or an authorized deputy.

SEC. 2. Section 12597 is added to the Food and Agricultural Code, to read:

12597. Commercial laboratories conducting pesticide residue analyses on produce or plant tissues shall register annually with the director by submitting, not later than July 1 of each year, a written application accompanied by a processing fee of fifty dollars ($50).

SEC. 3. Section 12598 is added to the Food and Agricultural Code, to read:

12598. It is unlawful for any commercial laboratory to engage in the business of testing produce or plant tissue for pesticide residue unless the laboratory is registered pursuant to Section 12597.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the

only costs 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 734

An act to amend Sections 12201, 12202, 12203, 12204, and 12214 of the Business and Professions Code, and to amend Sections 2101 2102, 2103, 2106, 2107, 2123, 2127, 2151, 2152, 2186, 2187, and 42795 of the Food and Agricultural Code, relating to agriculture, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 12201 of the Business and Professions Code is amended to read:

12201. If from any cause a vacancy occurs in the office of county sealer, the director upon learning of the vacancy shall immediately transmit to the board of supervisors or other appointing power a list of persons licensed by him or her for the position. If the appointing power fails to appoint a county sealer within 60 days after the receipt of the list, the director shall appoint a county sealer from that list. A person holding the position of Deputy State Sealer shall be appointed the county sealer of weights and measures for, and an employee of, the county to which he or she is assigned. The director shall issue to him or her a license which is valid only for the county he or she is serving. He or she shall become subject to this code.

SEC. 2. Section 12202 of the Business and Professions Code is amended to read:

12202. (a) The director shall cause to be examined persons desiring to become county sealers, deputy county sealers, or inspectors and shall adopt rules and regulations governing these examinations given for the purpose of determining the fitness, experience, and qualifications of candidates for these positions. The director may provide for inspectors qualified to be employed in designated categories. Successful candidates shall be given a license which shall be good for five years unless revoked. Licenses of incumbent county sealers, deputy county sealers, or inspectors shall be renewed upon expiration without further examination.

(b) The director may charge each candidate a fee to cover the actual cost of providing the license examination.

SEC. 3. Section 12203 of the Business and Professions Code is amended to read:

12203. Except as provided in this section, no person shall

hereafter be appointed to the office of county sealer, deputy county sealer or inspector unless he or she has a license issued by the director as provided in Section 12202. If there is no person available for the position of county sealer who holds a license, the appointing power may make a temporary appointment of a person recommended in writing by the director. If the appointing power does not make a temporary appointment and no person can be appointed from the eligible list by the director, then the director may make a temporary appointment of a person competent to carry on the duties of the office. Any such temporary appointment shall be for a period not exceeding six months or until the next license examination is held. If the position of deputy county sealer or inspector cannot be filled from the lists, a temporary appointment may be made, upon the written recommendation of the director for a period not exceeding six months.

SEC. 4. Section 12204 of the Business and Professions Code is amended to read:

12204. In chartered counties providing for the civil service examination of sealers, deputy sealers, or inspectors the director shall issue a license without further examination upon presentation of a certificate showing the candidate has passed the examination. In these counties the board or commission responsible for the civil service examination may require a license from the director as a minimum qualification.

SEC. 5. Section 12214 of the Business and Professions Code is amended to read:

12214. (a) Upon satisfactory evidence presented to the director that the county sealer of any county is guilty of neglect of duty, incompetence, or misconduct in office, the trial board hereinafter provided for shall hold a hearing or hearings at times and places that it shall provide.

(b) The director and the president of the voluntary association of the sealers of the state shall select an impartial third person who, with them, shall compose a county sealer's trial board to determine whether the sealer is guilty of the charges presented.

(c) At least 10 days prior to the date of hearing, the director shall give notice in writing to the sealer of the time and place of hearing and any information as to the nature of the charges that will enable the sealer to make a defense thereto.

(d) At the hearing or hearings, the trial board shall hear evidence that is offered and thereafter, within 30 days, make an order dismissing the charges or an order disqualifying the sealer.

(e) In case the order disqualifies the sealer, the director shall forthwith revoke the sealer's license and declare the office vacant and a copy of the order shall be immediately transmitted by the director to the board of supervisors and the auditor of the county in which the sealer held office.

(f) The license of a deputy sealer or inspector may be revoked in the same manner and for the same causes that a license of a sealer

may be revoked.

SEC. 6. Section 2101 of the Food and Agricultural Code is amended to read:

2101. (a) The director shall examine persons who desire to become commissioners or deputy commissioners. He or she may adopt regulations which govern the examinations. Successful candidates shall be given a license which shall be valid for five years unless revoked.

(b) The director may charge each candidate a fee to cover the actual cost of providing the license examination.

SEC. 7. Section 2102 of the Food and Agricultural Code is amended to read:

2102. (a) The director shall pass upon the qualifications of persons who desire to become county agricultural inspectors and shall issue licenses to successful candidates.

(b) The director may charge each candidate a fee to cover the actual cost of providing the license examination.

SEC. 8. Section 2103 of the Food and Agricultural Code is amended to read:

2103. The director shall issue a license, for any county which has a charter that provides for civil service examination of county agricultural inspectors, to any person who presents a certificate which shows that the person has passed the examination.

SEC. 9. Section 2106 of the Food and Agricultural Code is amended to read:

2106. No person shall be eligible for the examination or shall be given or issued a license pursuant to Section 2101, 2102, or 2103 unless he or she possesses a bachelor's degree from an accredited four-year college with specialization in one or more appropriate disciplines in the agricultural or biological sciences as determined by the director. In determining whether or not a college is accredited, the director may rely on accreditation granted by a state or national association formed and operated for the purpose of determining accreditation. This section shall not apply to any person holding a valid certificate of qualification issued prior to January 1, 1985.

SEC. 10. Section 2107 of the Food and Agricultural Code is amended to read:

2107. The director shall publish and make available a registry of persons holding a license pursuant to Section 2101, 2102, or 2103 and Section 12202 of the Business and Professions Code.

SEC. 11. Section 2123 of the Food and Agricultural Code is amended to read:

2123. Except as otherwise provided in this chapter, a person shall not be appointed to the office of commissioner or deputy commissioner unless he or she has a license issued by the director. The license of any qualified incumbent shall be renewed without further examination.

SEC. 12. Section 2127 of the Food and Agricultural Code is amended to read:

2127. Deputy commissioners and inspectors shall be appointed from a list which is furnished by the director of persons who hold a license for the office.

SEC. 13. Section 2151 of the Food and Agricultural Code is amended to read:

2151. If a vacancy in the office of commissioner occurs, the director, upon learning of the vacancy, shall immediately transmit to the board of supervisors or other appointing power a list of persons who are licensed by him or her to be eligible for the position.

SEC. 14. Section 2152 of the Food and Agricultural Code is amended to read:

2152. If within 30 days after the receipt of the list of persons who are licensed, the appointing power fails to appoint a commissioner from the list, the director shall appoint a commissioner from the list.

SEC. 15. Section 2186 of the Food and Agricultural Code is amended to read:

2186. If the order disqualifies the commissioner, the director shall revoke the commissioner's license and declare his or her office vacant. A copy of the order shall be immediately transmitted by the director to the board of supervisors and the auditor of the county in which the commissioner held office.

SEC. 16. Section 2187 of the Food and Agricultural Code is amended to read:

2187. The license of a deputy commissioner may be revoked in the same manner and for the same causes that a license of a commissioner may be revoked.

SEC. 17. Section 42795 of the Food and Agricultural Code is amended to read:

42795. (a) The board of supervisors of the county may establish reasonable fees to cover the cost incurred by commissioners in the enforcement of standards for salad products as defined by regulations established pursuant to Section 42684.

(b) The fees shall be based on the approximate cost of the inspection necessary to enforce the standards, and shall be paid by persons engaged in the preparation of salad products.

(c) The director may adopt regulations, including, but not limited to, all of the following:

(1) Establishing recommended county enforcement fees.

(2) Establishing inspection fees applicable to processors not subject to county inspection fees.

(3) Establishing inspection and reporting requirements for enforcement of salad product standards by the commissioners and the director.

SEC. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that local agricultural enforcement may proceed without delay during the current growing and harvesting season, it is necessary that this act take effect immediately.

CHAPTER 735

An act to create the Madera Water District and prescribing its boundaries, organization, operation, management, financing, and other powers and duties, and to add Section 28.5 to the Kings River Conservation District Act (Chapter 931 of the Statutes of 1951), relating to water districts.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. This act shall be known and may be cited as the Madera Water District Act.

SEC. 2. As used in this act:

(a) "Board" or "board of directors" means the board of directors of the district.

(b) "District" means the Madera Water District.

(c) "Holder of title" means the owner of record of the fee title to land, except that if the owner of record of the fee title has conveyed the equitable title to that land by way of a land sale contract and the contract or a memorandum thereof is recorded, "holder of title" means the contract vendee thereunder and not the record owner of the fee title.

(d) "Legal representative" means an official or designated employee of a corporation or partnership owning land, or a guardian, executor, or administrator of the estate of the holder of title to land who is appointed under the laws of this state, is entitled to the possession of the estate's land, or is authorized by the appointing court to exercise the particular right, privilege, or immunity which he or she seeks to exercise.

(e) "Voter" means a person who is a holder of title.

SEC. 3. A water district is hereby created to be called the Madera Water District. The district shall consist of all of the territory within the following described boundaries:

Beginning at the northeast corner of Lot 8 of Parcel Map No. 328, recorded in Book 15 at Pages 156 and 157 of Maps, County of Madera, being the point of beginning; thence southerly along and on the easterly line of Lot 8 and the easterly line of Lots 9 through 18 of Parcel Map No. 328 to the southeast corner of Lot 18; thence westerly and along and on the south line of Lot 18, and Lots 19, 20, and 21 of Parcel Map No. 328 to the southwest corner of Lot 21; thence west to the southeast corner of Lot 12 of Tract No. 170, recorded in Book 17 at Pages 27 and 28 of Maps, County of Madera; thence west along and on the south line of Lot 12, and Lot 11 of Tract No. 170 to the

southern most westerly corner of Lot 11; thence northerly along and on the southern westerly line of Lot 11 to the point of intersection with the western southerly line of Lot 11; thence westerly on that westerly southern line to the west line of Lot 11; thence northerly on the west line of Lot 11 to the northwest corner of Lot 11; thence westerly to the southeast corner of Lot 13 of Tract No. 170; thence westerly along and on the south line of Lot 13 and Lot 18 of Tract No. 170 to the northeast corner of Lot 53-A of Tract No. 170; thence southerly on the east line of Lot 53-A to the southeast corner of Lot 53-A; thence westerly on the south line of Lot 53-A and on the south line of Lots 19, 26, 27, and 34 of Tract No. 170 to the southwest corner of Lot 34; thence northerly along and on the west line of Lot 34 and the west line of Lot 33 of Tract No. 170 to the southwest corner of Lot 32; thence westerly along and on the south line of Lots 38, 39, 46, and 47 of Tract No. 170 to the southwest corner of Lot 47; thence northerly along and on the westerly line of Lots 47, 48, 44, and 43 of Tract No. 170 to the northwest corner of Lot 43; thence westerly to the northeast corner of Lot 50 of Tract No. 170; thence southerly along and on the easterly lines of Lots 50, 49, and 53 of Tract No. 170 to the southwest corner of Lot 53; thence northerly along and on the west line of Lots 53 and 49 to the northwest corner of Lot 49; thence westerly along and on the south line of Lot 51 of Tract No. 170 to the southwest corner of Lot 51; thence northerly along and on the west line of Lots 51 and 52 of Tract No. 170 to the northwest corner of Lot 52; thence northeasterly along and on the north line of Lot 52 to the northeast corner of Lot 52; thence southerly along and on the easterly line of Lot 52 to the southeast corner of Lot 52; thence southeasterly to the northwest corner of Lot 50; thence easterly along and on the northerly line of Lot 50 to the northeast corner of Lot 50; thence east to the northwest corner of Lot 43 of Tract No. 170; thence easterly along and on the north line of Lots 43, 42, and 35 of Tract No. 170 to the northeast corner of Lot 35; thence leaving Tract No. 170, and northeasterly to the southwest corner of Lot 1 of Parcel Map No. 154, recorded in Book 14 at Page 109, records Madera County; thence northerly along and on the west line of Lot 1 to the northwest corner thereof; thence easterly along and on the north lines of Lots 1 through 12, inclusive, of Parcel Map No. 154 to the northeast corner of Lot 12; thence southerly along and on the east line of Lot 12 to the southeast corner thereof; thence southeasterly to the northwest corner of Lot 2 of Tract No. 170; thence easterly along and on the north line of Lot 2 and the north line of Lot 1 of Tract No. 170 to the northeast corner of Lot 1; thence easterly to the northwest corner of Lot 1 of Parcel Map No. 328; thence easterly along and on the north lines of Lots 1 through 8, inclusive, of Parcel Map No. 328 to the northeast corner of Lot 8, being the point of beginning.

SEC. 4. (a) Land not a part of the district, whether or not contiguous to it, may be included within the district in accordance with the Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000) of Title 5 of the

Government Code).

(b) Land may be excluded from the district in accordance with the Cortese-Knox Local Government Reorganization Act of 1985.

SEC. 5. The district created by this act shall acquire title to all property originally acquired for the Madera County Waterworks District No. 2 and vested in Madera County, and all funds on hand or moneys due, or to become due, to the Madera County Waterworks District No. 2 shall be paid to the district. The district shall assume the obligations of the waterworks district, including, but not limited to, obligations for payment of principal and interest on outstanding bonds. All employees of the waterworks district shall become employees of the district and receive the same rate of pay as they received from the waterworks district.

SEC. 6. (a) The board of directors, by resolution, may establish zones within the district without reference to the boundaries of other zones, setting forth in the resolution descriptions thereof by metes and bounds and designating each of the zones by a zone number, and institute zone projects for the specific benefit of the zones. The board may, by resolution, revise the boundaries of the zones 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.

(b) 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 30.

SEC. 7. The objects and purposes of the district are to provide the lands of the district with water for domestic, irrigation, and industrial uses and to provide such other services as may be authorized under this act.

SEC. 8. 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:

(a) To have perpetual succession.

(b) To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(c) To adopt a seal and alter it at its pleasure.

(d) To supply the landowners of the district with water for domestic, irrigation, and industrial purposes.

(e) To maintain roads in the district, including weed control on road easements.

(f) To construct and maintain culverts, drains, and works incidental to the purposes specified in subdivision (e).

(g) To acquire by grant, purchase, lease, gift, devise, contract, condemnation, 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, improvements, or property acquired by it as authorized by this act.

(h) To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and to import water into the district, and to conserve within or outside of the district water for any purpose useful to the district; and to do any and every lawful act necessary to be done that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the district.

(i) To incur indebtedness, and to issue bonds in the manner provided in this act.

(j) 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 provided in this act.

(k) To make contracts, and to appoint or employ all needed agents, superintendents, and engineers, 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.

(*l*) To contract with any city, county, district, or other public agency of the state or federal government, to purchase or acquire from, or to sell to, or jointly to acquire, construct, operate, or maintain a water system or water supply to serve their inhabitants.

(m) To accept federal or state grants available for construction, improvement, or repair of district facilities.

SEC. 9. The district may sell surplus water to any person, firm, corporation, public agency, or other consumer outside the district when the board finds that the district has a surplus of water above that which is required by the consumers within the district.

SEC. 10. The district may acquire real or personal property of every kind within or outside the district by grant, purchase, gift, devise, lease, or eminent domain. 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, cables, or poles of any public utility which is required to be removed to a new location.

SEC. 11. Whenever a part only of a parcel of land is required by the district, and the taking thereof, and the construction of the proposed public improvement thereon, will interfere with reasonable access to the remainder of a portion thereof, or will otherwise cause substantial damage to the remainder, the district

may condemn, purchase, or otherwise acquire the whole parcel of land or that portion of the remainder to which access is impaired and may sell the remainder or exchange the same for other property required for district purposes. Or, in lieu of that acquisition of the remainder, the district may condemn, purchase, or otherwise acquire an easement for ingress to and egress from the remainder for use by the public, including the owner of the land.

SEC. 12. The powers of the district enumerated in this act shall, except as otherwise provided in this act, be exercised by the board.

SEC. 13. The board of directors shall consist of five elected members. The term of office of directors shall be four years. The directors shall hold office until their successors shall be elected or appointed and qualified.

SEC. 14. The first board of directors shall be appointed by the Board of Supervisors of the County of Madera. The directors appointed shall meet the qualification for director set forth in Section 15. The first board of directors shall hold office until their successors shall be elected or appointed and qualified. The successors of three of the directors, chosen by lot, shall be elected at the 1988 general election and the successors of the other two directors shall be elected at the 1990 general election, as provided in Section 15.

SEC. 15. Each of the five elected members shall be nominated and elected by the qualified voters owning land in the district and in the manner provided by general law for the election of county supervisors. Three of the elected directors shall be first elected at the general election held in 1988. Two of the elected directors shall be first elected at the general election held in 1990. At each general election thereafter, either three or two directors, as the case may be, shall be elected. The term of office shall begin at noon on the first Monday in January following the general district election. In order to be eligible for election or appointment, each director shall have been a qualified voter and a holder of title to land within the district or the legal representative of that holder of title to land. Every member of the board, whether elected or appointed, may be recalled by the voters in accordance with the recall provisions of Chapter 3 (commencing with Section 27200) of Division 16 of the Elections Code applicable to officers of counties.

SEC. 16. The board shall elect a president from its members and appoint the secretary.

SEC. 17. The board shall appoint an alternate director who shall satisfy the eligibility requirements of a board member set forth in Section 15. The alternate director shall be empowered to act as a director, if needed, to constitute a quorum of the board for the transaction of business. The term of office of the alternate director shall be four years.

SEC. 18. Whenever a vacancy occurs in the office of an elected director, the vacancy shall be filled by appointment by the board of directors of a qualified voter. If the appointment is not made within 90 days from the occurrence of the vacancy, the Board of Supervisors

of Madera County shall make the appointment. An appointee shall hold office until the election and qualification of his or her successor. At the next general election following any vacancy, a director shall be elected for the unexpired term of the office unless that term is to expire on the first Monday in January of the year succeeding that general election.

SEC. 19. The board shall select and maintain an office for the district at a fixed place which need not be within the district.

SEC. 20. The board shall hold regular meetings at such time and place as may be agreed upon by resolution. The board shall hold special meetings as it deems advisable.

SEC. 21. A special meeting is invalid unless prior thereto one of the following has been done:

(a) Each director has filed with the secretary his or her written consent to the meeting.

(b) The president or three members of the board have called the meeting by giving each director five days' written notice of the meeting.

(c) The directors have authorized the meeting by a resolution adopted at a former meeting and have caused five days' written notice of the meeting to be given by the secretary to each director not joining in the resolution.

SEC. 22. A majority of the membership of the board shall constitute a quorum of the board for the transaction of business. The vote of a majority of the directors present at any meeting attended by a quorum shall be necessary to determine any proposition or resolution presented.

SEC. 23. The secretary shall keep a record of all the proceedings conducted at meetings of the board. All documents pertaining to district affairs shall be filed in the office of the district with the secretary and shall be open to inspection at all times by any interested person.

SEC. 24. Each voter shall have one vote for each acre of land to which he or she holds title. The last equalized assessment book of the district is conclusive evidence of ownership and of the acreage of the land so owned, except that in the event that an assessment for the district shall not have been made and levied for the year in which the election is held, the last equalized assessment roll of Madera County shall be used in lieu of the assessment book of the district.

SEC. 25. Every voter, or his or her legal representative, may vote at any district election either in person or by a person duly appointed as his or her proxy.

SEC. 26. No appointment of a proxy shall be valid, accepted, or vote allowed thereon at any district election unless it meets all of the following requirements:

(a) It is in writing.

(b) It is executed by the person or legal representative of the person who, in accordance with Section 24, is entitled to the votes for which the proxy is given.

(c) It is acknowledged or certified in accordance with Section 2015.5 of the Code of Civil Procedure.

(d) It specifies the election at which time it is to be used. An appointment of a proxy shall be used only at the election specified.

(e) It shall be on a form as specified by the county clerk meeting the above requirements.

Every appointment of a proxy is revocable at the pleasure of the person executing it at any time before the person appointed as proxy shall have cast a ballot representing the votes for which the appointment was given.

SEC. 27. Before a legal representative votes at a district election, he or she shall present to the precinct board a certified copy of his or her authority which shall be kept and filed with the returns of the election.

SEC. 28. The district may adopt and enforce all rules, regulations, and ordinances which may be necessary and proper for the following:

(a) The administration and government of the district.

(b) The acquisition, purchase, or construction and use and operation of the water distribution system, property, and other facilities of the district.

(c) All other purposes of the district not in conflict with laws of this state.

SEC. 29. Any violation of a regulation or ordinance of the district is a misdemeanor punishable by fine not to exceed five hundred dollars ($500), or imprisonment not to exceed six months, or both.

SEC. 30. 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 zones or participating zones and fixing a time and place for a public hearing on the resolution and which shall refer to a map or maps showing the general location and general construction of the project. Notice of the hearing 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, in a newspaper of general circulation designated by the board, circulated in the zone or each of the participating zones. The notice shall designate a public place where a copy or copies of the map or maps of the joint project may be seen by any interested person. The map shall be posted in each of those public places so designated in the notice at least two weeks prior to the hearing.

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. Upon the conclusion of

the hearing, the board may abandon the proposed project or proceed with the project, and its decision thereon shall be final and conclusive.

SEC. 31. The board shall, in any year, have the following powers:

(a) To levy ad valorem taxes or assessments in the district, to pay the general administrative costs and expenses, including maintenance and operation of established works, of the district and to carry out any of the objects or purposes of this act of common benefit to the district.

(b) To levy taxes or assessments in each or any of the zones and participating zones, to pay the costs of carrying out any of the objects or purposes of this act performed or to be performed on behalf of those respective zones, 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 respective zones, according to the benefits derived or to be derived by the respective zones, by any of the following methods:

(1) By a levy or assessment upon all property within a zone or participating zone, including land, improvements thereon, and personal property.

(2) By a levy or assessment upon all real property within a zone or participating zones, including both land and improvements thereon.

(3) By a levy or assessment upon land only within a zone or participating zones.

It is declared that for the purposes of any tax or assessment levied under this subdivision, the property so taxed or assessed within a given zone is equally benefited.

(c) To levy assessments upon any property in each or any of the zones, according 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).

In the event of project cooperation with any public agency as authorized in subdivision (*l*) of Section 8 and the making of a contract with any such public agency for the purposes set forth in that subdivision, by the terms of which work is agreed to be performed by any such public agency in any specified zone or participating zones, for the particular benefit thereof, and by that contract, it is agreed that the district is to pay to the public agency, a sum of money in consideration or subvention for the performance of the work by that public agency, the board may levy and collect a special tax or assessment upon the property in the zone or participating zones, to raise funds to enable the district to make that

payment, in addition to other taxes or assessments otherwise provided for in this act.

The taxes or assessments shall be levied and collected together with, and not separately from taxes for general district purposes, and the revenues derived from the special district taxes or assessments shall be paid into the district treasury to the credit of the respective zones thereof, and the board shall have the power to control and order the expenditure thereof for those purposes. No revenues, or portions thereof, derived in any of the several zones from the taxes or assessments levied under the provisions of subdivision (b) 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 that zone, or zones, but for the benefit thereof. In cases or projects joint to two or more zones, the zones shall constitute and be referred to as participating zones.

SEC. 32. The board may fix and collect rates or charges for the use and supply of water and other services furnished by the district and for the purchase of water and water rights, and may apply the receipts from the rates or charges to the expenses of the administration and government of the district and the use, operation, and extension of its facilities.

SEC. 32.1. The charges to pay revenue bonds and interest thereon may include a standby or carrying charge notwithstanding that the water is not actually used, under such rules and regulations as the board may prescribe. In no event shall the standby charge exceed twenty dollars ($20) per acre per year.

SEC. 33. Whenever the board shall, by resolution so direct, the receipts from rates or charges may also be used to reduce the principal or interest of any bonded indebtedness that the district may have.

SEC. 34. (a) Whenever the board determines that a bonded indebtedness should be incurred to pay the cost of any project in the district, the board may by resolution, determine and declare the respective amounts of bonds to be issued to raise the amount of money necessary for each project and the denomination and the maximum rate of interest of the bonds. In determining each amount of bonds andthe amount of money necessary for each project, the board may include therein the portion, if any, of the cost of that project heretofore advanced by the district for which the district proposes to reimburse itself from the proceeds of sale of any bonds to be issued to pay for the project and the cost of lands, right-of-way, easements, and property proposed to be taken, acquired, or injured in carrying out the project and also of all incidental expenses likely to be incurred in connection therewith, including legal, clerical, engineering, superintendence, inspection, printing, and advertising, and, if deemed advisable, a sum sufficient to pay interest on any bonds proposed to be issued during all or any part of the period of construction of the project and for not to exceed 12 months

thereafter. 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 Madera County within five days after its issuance. From and after the filing of that copy of the resolution, the board shall be authorized to proceed with the bond election.

(b) After the filing for record of the resolution specified in subdivision (a), the board may call a special bond election in the district at which shall be submitted to all of the owners of the real property of the district 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. The bonds and the interest thereon shall be paid from revenue derived from annual taxes or assessments levied as provided in this act.

(c) If the board decides to call a special bond election, it shall submit by resolution to the owners of the real property of the district, the proposition of incurring a bonded debt in the district 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. It shall be sufficient to give a brief, general description of those objects and purposes, and refer to the recorded copy of the resolution adopted by the board, and on file for particulars. The resolution shall also state the estimated cost of the proposed project, 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. The rate of interest to be paid on the indebtedness shall not exceed 12 percent per year, unless some higher rate is permitted by law. For the purposes of the election, the board shall, in the resolution, designate a polling place.

(d) In all particulars not recited in the resolution, the special bond election shall be held as nearly as practicable in conformity with the general election laws of the state.

(e) The board shall cause a map or maps to be prepared covering a general description of the project, which shall show the location of the proposed projects, 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.

(f) The resolution calling for the special bond election shall, prior to the date set for the election, be published pursuant to Section 6062 of the Government Code in a newspaper of general circulation in the immediate vicinity of the district. The last publication of the resolution shall be at least 14 days before the election. Holders of title, based on the last equalized assessment book of the district, shall be notified by registered mail of special bond election at least 30 days prior to the election. No other notice of the election need be given, nor need polling place cards be issued.

(g) 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. If at the election two-thirds of the votes cast, based on the acreage of land, are in favor of incurring the bonded indebtedness, then bonds for such zone or participating zones for the amount stated in those proceedings shall be issued and sold as provided in this act.

SEC. 35. (a) 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 zones 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 interest, not to exceed 12 percent per year, unless some higher rate is permitted by law, on all sums unpaid on that date until the whole of the indebtedness shall have been paid.

(b) 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 of 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. The final maturity date shall not exceed 40 years from the time of incurring the indebtedness evidenced by each issue or series. The board may provide for call and redemption of all or any part of any issue or series of bonds before maturity at prices determined by the board. No bond shall be subject to call or redemption prior to maturity unless it contains a recital to that effect.

(c) The bonds shall be issued in such denominations as the board may determine, except that no bonds shall be of a less denomination than one hundred dollars ($100), nor of a greater denomination than one thousand dollars ($1,000), and shall be payable on the days and at the place fixed in the bonds, and with interest at the rate specified in such bonds, which rate shall not exceed 12 percent per year, unless some higher rate is permitted by law, 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. Either or both those signatures may be printed, engraved, or lithographed. The interest coupons of the bonds shall be numbered consecutively and signed by the auditor by his or her printed, engraved, or lithographed signature. In case any such officer whose signatures or countersignatures appear on the bonds or coupons shall cease to be such 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. 36. The board may issue and sell the bonds of the district or zones authorized as provided in this act at not less than par value, and

the proceeds of the sale of the bonds shall be placed in the treasury of the district to the credit of the district or the respective participating zones thereof, for the uses and purposes of the district, zone, or zones voting the bonds. The proper record of these transactions shall be placed upon the books of the district treasurer, and the respective district or zone funds shall be applied exclusively to the purposes and objects mentioned in the resolution calling the special bond election, 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 district.

SEC. 37. Any bonds issued under this act and the interest thereon shall be paid by revenue derived from an annual tax or assessment, levied as provided in subdivision (b) of Section 31. No zone, nor the property therein, shall be liable for the share of bonded indebtedness of any other zone, nor shall any moneys derived from taxation or assessment in any of the several zones be used in payment of principal or interest or otherwise of the share of bonded indebtedness chargeable to any other zone, except in the case of joint projects by participating zones.

SEC. 38. The board shall levy a tax or assessment each year sufficient to pay the interest and such portion of the principal of the bonds as is due or to become due before the time for making the next general tax levy. The taxes or assessments shall be levied and collected in the respective zones of issuance together with and not separately from taxes for general district purposes, and when collected shall be paid into the district treasury to the credit of the zone of payment, and be used for the payment of the principal and interest on the bonds, and for no other purpose. The principal and interest of the bonds shall be paid by the district treasurer in the manner provided by law for the payment of principal and interest on bonds of the district.

SEC. 39. Whenever bonds have been authorized by any zone or participating zones of the district and the proceeds of the sale thereof have been expended as authorized in this act, and the board shall, by resolution, determine that additional bonds should be issued for carrying out the purposes of water supply, 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 zones, the question of issuing additional bonds in the same manner and with like procedure as provided in this act, and all provisions of this act for the issuing and sale of the bonds, and for the expenditure of the proceeds thereof, shall be deemed to apply to that issue of additional bonds.

SEC. 40. Should a proposition for issuing bonds for any zone or participating zones 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 for the purpose specified, the board shall not for six months after the election call or order

another election in the zone or participating zones for incurring indebtedness and issuing bonds under the terms of this act for the same objects and purposes.

SEC. 41. The provisions of law of this state, prescribing the time and manner of levying, assessing, equalizing, and collecting property taxes, including the sale of property for delinquency, and the redemption from that sale, are, so far as they are applicable, and not in conflict with the specific provisions of this act, hereby adopted.

SEC. 42. The bonds of the district issued for any zone or zones 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, be invested in bonds of cities, cities and counties, counties, school districts, or districts in this state, that money or funds may be invested in the bonds of the district issued in accordance with this act, and whenever bonds of cities, cities and counties, counties, school districts, or districts may, by any law, be used as security for the performance of any act, the bonds of the district may be so used.

This section is intended to be and shall be considered the latest enactment with respect to the matters contained in this section.

SEC. 43. All bonds issued by the district under this act shall be free and exempt from all taxation within the State of California. It is hereby declared that the district is a local government within the meaning of Section 26 of Article XIII of the California Constitution.

SEC. 44. All contracts in excess of five thousand dollars ($5,000) shall be let to the lowest responsible bidder, except that district may contract with Madera County for furnishing labor, materials, or supplies required for any improvement mentioned in this act upon such terms and conditions as the board may elect. The district shall advertise in the county pursuant to Section 6061 of the Government Code, inviting sealed proposals for furnishing labor, materials, and supplies for the proposed improvement before any contract shall be made. The district shall have the right to require such bonds as it may deem best from the successful bidder, to insure the faithful performance of the contract, and shall also have the right to reject any and all bids.

SEC. 45. The district may, in case of emergency, proceed at once, by a vote of not less than three members of the board, to make such repairs or do such other work as may be necessary to prevent a threatened interruption of water supply or to restore the water distribution system to working condition without advertising for bids. The board shall cause a statement of the facts constituting the emergency to be entered in their minutes.

SEC. 46. When the board determines that any work of repairing, improving, renewing, or extending district facilities can be done more economically and satisfactorily by day labor without letting contracts to the lowest bidder as provided in Section 44, the board may cause the work to be done by day labor.

SEC. 47. Any improvement for which bonds are voted under this act shall be made in conformity with the report, plans, specifications, and map theretofore adopted, unless the doing of any such 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, in which event the board 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. 48. The district may bring an action in the court having jurisdiction against any water user within the district for the collection of any delinquent assessment or water charge. The court, having jurisdiction of the action, may, in addition to allowing recovery of costs to the district as allowed by law, fix and allow as part of the judgment interest and penalties. Should the district, as a provisional remedy in bringing the action, seek an attachment against the property of any named defendant therein, the district shall not be required to provide a bond or undertaking as is otherwise provided for in Title 6.5 (commencing with Section 481.010) of Part 2 of the Code of Civil Procedure.

SEC. 49. The district may refuse to furnish water to any land to which it holds title by virtue of collector's deeds to the district or to any or all land on which the district has an outstanding unredeemed certificate of sale for nonpayment of a district assessment or on which the landowner refuses to pay delinquent assessments after proper notice thereof.

SEC. 50. The repeal or amendment of this act or the change in boundaries of any zone of the district 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 those bonds and outstanding indebtedness have been fully paid and discharged.

SEC. 51. All claims for money or damages against the district are governed by Parts 3 (commencing with Section 900) and 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as otherwise provided.

SEC. 52. 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 that property, as provided in this act. The board may determine, by resolution duly entered in their minutes, that any property, real or personal, or interest therein, 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 that property. If the board determines the value of the property to be five thousand dollars ($5,000) or less, or the property is being leased for one year or less, it may be sold or leased without notice. If the board determines the property to have

a value of more than five thousand dollars ($5,000) or the property is being leased for more than one year, a notice of time and place of sale or leasing shall be given by posting three notices in three public places within the district five days before the date of sale or leasing. At the time fixed for the sale or leasing, bids shall be received and the board may sell or lease to the highest bidder or may reject any or all bids.

SEC. 53. Any improvement provided for in this act may be located, constructed, and maintained in, along, or across any public road or highway, or publicly owned right-of-way in the county, in such manner as to afford security for life and property, but the board shall restore, or cause to be restored, the road or highway, or publicly owned right-of-way to its former state, as near as may be, or in a sufficient manner not to have impaired unnecessary its usefulness.

SEC. 54. The district, in order to determine the legality of its existence, or any contract entered into by the district, may institute a proceeding therefor in the superior court of this state, in and for the County of Madera, by filing with the clerk of the 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 water district formed under this act, or setting forth the name of the district, the parties to and nature of the contract, a copy of the contract, and a prayer that it be adjudged a legal contract. The summons in the proceeding shall be served by publishing a copy thereof once a week for four weeks in a newspaper of general circulation published in the county. The State of California shall be a defendant in the action, and consent therefor is given. Service of summons therein shall be made on the Attorney General. The Attorney General shall appear in the action on behalf of the state in the same manner as with appearances in civil actions. 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. The answer shall set forth the fact relied upon to show the invalidity of the district, or the contract, and shall be served upon the attorney for the district 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. 55. (a) Each person elected or appointed to the office of director shall, within 10 days after receiving his or her certificate of election, or notice of appointment, qualify as such by taking and subscribing to an official oath and executing and filing an official bond in the sum of one thousand dollars ($1,000) which shall be approved by the judge of the Superior Court of Madera County and shall be recorded in the offices of the county recorder of that county. The director shall file that official bond, together with his or her official oath, with the clerk of the board. The premium for the bond

shall be paid by the district.

(b) The bylaws shall fix the compensation to be paid to all officers. Until their compensation is fixed by the adoption of bylaws, the secretary, treasurer, and general manager shall receive such sums as shall be fixed by the board.

(c) Each director or alternate director shall receive compensation in an amount not to exceed one hundred dollars ($100) 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 six days in any calendar month. Directors shall not be granted any compensation for their expenses at regular board meetings.

(d) Employees appointed by the board under this act, when required by the board of the district, shall execute bonds conditioned, executed, approved, filed, and recorded in the general manner and form provided by law for officers of the county, before entering upon the duties of their respective employments.

SEC. 56. This act, and every part thereof, shall be liberally construed to promote the objects thereof, and to carry out its intents and purposes.

SEC. 57. The provisions and procedures of law available under this act are not subject to the Special Assessment Investigation, Limitation and Majority Protest Act of 1931.

SEC. 58. 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 that provision to other persons or circumstances, shall not be affected thereby.

SEC. 59. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 and because other 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. 60. Section 28.5 is added to the Kings River Conservation District Act (Chapter 931 of the Statutes of 1951), to read:

Sec. 28.5. Improvement districts may be formed in the district for any authorized purpose of the district in the same manner as improvement districts are formed in irrigation districts. When formed, the improvement districts shall be governed under Part 7 (commencing with Section 23600) of Division 11 of the Water Code in the same manner as improvement districts in irrigation districts. The board shall have the same rights, powers, duties, and responsibilities with respect to the formation and government of improvement districts in the district as the board of directors of an irrigation district has with respect to improvement districts in irrigation districts. Assessments in an improvement district in the

district shall be levied, collected, and enforced at the same time and as nearly in the same manner as practicable as annual taxes of the county, except that the assessment shall be made in the same manner as provided with respect to improvement districts in irrigation districts.

CHAPTER 736

An act to amend Section 409.5 of the Penal Code, relating to emergency rescue personnel.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 409.5 of the Penal Code is amended to read:

409.5. (a) Whenever a menace to the public health or safety is created by a calamity such as flood, storm, fire, earthquake, explosion, accident, or other disaster, officers of the California Highway Patrol, California State Police, police departments, marshal's office or sheriff's office, any officer or employee of the Department of Forestry and Fire Protection designated a peace officer by subdivision (i) of Section 830.2, any officer or employee of the Department of Parks and Recreation designated a peace officer by subdivision (h) of Section 830.3, and any publicly employed full-time lifeguard or publicly employed full-time marine safety officer while acting in a supervisory position in the performance of his or her official duties, may close the area where the menace exists for the duration thereof by means of ropes, markers or guards to any and all persons not authorized by the lifeguard or officer to enter or remain within the enclosed area. If such a calamity creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions which are set forth above in this section.

(b) Officers of the California Highway Patrol, California State Police, police departments, marshal's office or sheriff's office or officers of the Department of Forestry and Fire Protection designated as peace officers by subdivision (i) of Section 830.2 may close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating any calamity enumerated in this section or any riot or other civil disturbance to any and all unauthorized persons pursuant to the conditions which are set forth in this section whether or not the field command post or other command post is located near to the actual calamity or riot or other civil disturbance.

(c) Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision (a) or (b) and who willfully

remains within the area after receiving notice to evacuate or leave shall be guilty of a misdemeanor.

(d) Nothing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 737

An act to amend Section 1078 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. It is the intent of the Legislature in the enactment of this act to clarify the proper extent of voir dire examination of prospective jurors in criminal cases in order to ensure that the voir dire process is not used for improper purposes.

SEC. 2. Section 1078 of the Penal Code is amended to read:

1078. (a) It shall be the duty of the trial court to examine the prospective jurors to select a fair and impartial jury. The trial court shall permit reasonable examination of prospective jurors by counsel for the people and for the defendant, such examination to be conducted orally and directly by counsel.

(b) In each case it shall be the duty of the trial judge to provide for a voir dire process as speedy, focused, and informative as possible, and to protect prospective jurors from undue harassment and embarrassment and from inordinately extensive, repetitive, or unfocused examinations.

(c) In discharging its duties, the court shall have discretion and control with respect to the form and subject matter and duration of voir dire examination. In exercising that discretion and control, the trial judge shall be guided by, among other criteria, the following:

(1) The nature of the charges and the potential consequences of a conviction.

(2) Any unique or complex elements, legal or factual, in the case.

(3) The individual responses or conduct of jurors which may reveal attitudes inconsistent with suitability to serve as a fair and impartial juror in the particular case.

(4) The attorneys' need, under the circumstances, for information on which to exercise peremptory challenges intelligently.

(d) The trial court shall not permit questions which the trial court concludes would, as their sole purpose, do any of the following:

(1) Educate the jury panel to the particular facts of the case.

(2) Compel the jurors to commit themselves to vote in a particular way.

(3) Prejudice the jury for or against any party.

(4) Argue the case.

(5) Indoctrinate the jury.

(6) Instruct the jury in a matter of law.

(7) Attempt to accomplish any other improper purpose.

(e) The trial court shall require that questions be phrased by counsel in a neutral and nonargumentative form.

CHAPTER 738

An act to amend Sections 4980.38, 4980.40, 4980.41, 4980.42, 4980.43, 4980.44, 4980.45, 4980.50, 4980.54, 4980.80, 4980.90, 4982, 4982.25, and 4984.4 of the Business and Professions Code, relating to consumer affairs.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 4980.38 of the Business and Professions Code is amended to read:

4980.38. (a) Each educational institution preparing applicants to qualify for licensure shall notify each of its students by means of its public documents or otherwise in writing that its degree program is designed to meet the requirement of Section 4980.37 and shall certify to the board that it has so notified its students.

(b) In addition to all the other requirements for licensure, each applicant shall submit to the board a certification by the chief academic officer, or his or her designee, of the applicant's educational institution that the applicant has fulfilled the requirements enumerated in Sections 4980.37 and 4980.40, and subdivisions (a) and (d) of Section 4980.41.

SEC. 2. Section 4980.40 of the Business and Professions Code is amended to read:

4980.40. To qualify for a license an applicant shall have all the following qualifications:

(a) Applicants applying for licensure on or after January 1, 1988, shall possess a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, counseling with an emphasis in

marriage, family, and child counseling, or social work with an emphasis in clinical social work, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, the Northwest Association of Secondary and Higher Schools, or an essentially equivalent accrediting agency, as determined by the board, or approved by the Superintendent of Public Instruction, pursuant to subdivision (b) of Section 94310 of the Education Code. In order to qualify for licensure pursuant to this subdivision, any doctor's or master's degree program shall contain no less than 48 semester or 72 quarter units of instruction. The instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling and marital and family systems approaches to treatment.

The coursework shall include all of the following areas:

(1) The salient theories of a variety of psychotherapeutic orientations directly related to marriage, family, and child counseling, and marital and family systems approaches to treatment.

(2) Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.

(3) Developmental issues and life events from infancy to old age and their effect upon individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families, stepparenting, and geropsychology.

(4) A variety of approaches to the treatment of children.

The board may, by regulation, further define the content requirements of required courses specified in this subdivision.

(b) In addition to the 12 semester or 18 quarter units of coursework specified above, the doctor's or master's degree program shall contain not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, couple, family, and child relationships, including dysfunctions and healthy functioning and health promotion and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage, family, and child counselor.

(1) Supervised practicum hours, as specified in this subdivision, shall be evaluated, accepted, and credited as hours for trainee experience by the board.

(2) Educational institutions and trainees are encouraged to design the practica to include marriage, family, and child counseling experience in low-income and multicultural mental health settings.

(3) The practicum hours shall be considered as part of the 48 semester or 72 quarter unit requirement.

(c) As an alternative to meeting the qualifications specified in subdivision (a), the board shall accept as equivalent degrees, those master's or doctor's degrees granted by educational institutions whose degree program is approved by the Commission on Accreditation for Marriage and Family Therapy Education.

(d) All applicants shall, in addition, complete the coursework or training specified in Section 4980.41.

(e) All applicants shall be at least 18 years of age.

(f) All applicants shall have at least two years' experience in interpersonal relationships, marriage, family, and child counseling and psychotherapy under the supervision of a licensed marriage, family, and child counselor, licensed clinical social worker, licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology. For those supervisorial relationships in effect on or before December 31, 1988, and which remain in continuous effect thereafter, experience may be gained under the supervision of a licensed physician who has completed a residency in psychiatry.

(1) All experience shall be at all times under the supervision of the supervisor who shall, with the person being supervised, be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for the compliance of all laws, rules, and regulations governing the practice of marriage, family, and child counseling.

(2) Supervision shall include at least one hour of direct supervision for each week of experience claimed.

(3) Any person supervising another pursuant to this subdivision shall have been licensed or certified for at least two years prior to acting as a supervisor and shall have a current license which is not under suspension or probation, except these requirements shall not affect any supervisorial relationship in existence on December 31, 1983.

(4) The supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of his or her undertaking individual or group counseling or psychotherapy as appropriate, and insofar as it is deemed appropriate and is desired by the applicant, the supervisor shall seek to assist the applicant in obtaining that counseling or psychotherapy at a reasonable cost.

(5) The board may prescribe by regulation any other qualifications for supervisors that it deems appropriate.

(g) The applicant shall pass a written examination and an oral examination conducted by the board or its designees.

(h) The applicant shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

(i) Applicants applying for licensure on or before December 31, 1987, shall possess all of the qualifications specified in subdivisions (e) to (h), inclusive, and shall possess a doctor's or master's degree in marriage, family, and child counseling, social work, clinical

psychology, counseling, counseling psychology, child development and family studies, or a degree determined by the board to be equivalent, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, the Northwest Association of Secondary and Higher Schools, or an essentially equivalent accrediting agency as determined by the board.

(j) Persons who commenced graduate study, as defined in Section 4980.40, on or before December 31, 1987, shall be governed by subdivisions (i) and (k) of this section only if they apply and qualify for internship registration or licensure examination within five years of their starting such graduate study or by December 31, 1987, whichever is later.

(k) For applicants applying for a license pursuant to subdivisions (i) and (j), the board may make a determination that an applicant's master's or doctor's degree is an equivalent degree if it finds that the degree was issued upon completion of a course of academic study primarily designed to train persons as a marriage, family, and child counselor. The course of study completed by the applicant shall contain not less than 30 semester or 45 quarter units of coursework as follows: (1) human biological, psychological, and social development, (2) human sexuality, (3) psychopathology, (4) cross-cultural mores and values, (5) theories of marriage, family, and child counseling, (6) professional ethics and law, (7) human communication, (8) research methodology, (9) theories and applications of psychological testing, and (10) not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, family, and child relationship dysfunctions. The applicant shall submit to the board satisfactory written verification by the chief academic officer of the accredited or approved school, or by an authorized designee, that the applicant has successfully completed courses, including the practicum required by the board. The verification shall include, but need not be limited to, descriptions of the completed courses. The board may request further written verification of course content and academic experience to determine that the applicant's training and experience is equivalent to the course of instruction required by this section.

SEC. 3. Section 4980.41 of the Business and Professions Code is amended to read:

4980.41. All applicants for licensure shall complete the following coursework or training in order to be eligible to sit for the licensing examinations:

(a) A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors, which shall include, but not be limited to, the following areas of study:

(1) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the profession's scope of practice.

(2) The therapeutic, clinical, and practical considerations

involved in the legal and ethical practice of marriage, family, and child counseling, including family law.

(3) The current legal patterns and trends in the mental health profession.

(4) The psychotherapist/patient privilege, confidentiality, the patient dangerous to self or others, and the treatment of minors with and without parental consent.

(5) A recognition and exploration of the relationship between a practitioner's sense of self and human values and his or her professional behavior and ethics.

This course may be considered as part of the 48 semester or 72 quarter unit requirements contained in Section 4980.40.

(b) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 or any regulations promulgated thereunder.

(c) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.40.

(d) Except for persons who have started graduate study prior to January 1, 1986, a master's or doctor's degree qualifying for licensure shall include specific instruction in alcoholism and other chemical substance dependency as specified by regulation. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.40.

SEC. 4. Section 4980.42 of the Business and Professions Code is amended to read:

4980.42. (a) Experience for the purpose of satisfying subdivision (f) of Section 4980.40 shall include supervised marriage, family, and child counseling, and up to one-third of the hours may include receiving direct supervision and other professional enrichment activities.

(b) "Professional enrichment activities," for the purposes of this section, may include group or individual psychotherapy received by an applicant as a requirement for licensure. This psychotherapy may include up to 100 hours taken as a trainee or intern and each of those hours shall be triple-counted toward the professional experience requirement. This psychotherapy shall be performed by a licensed marriage, family, and child counselor, licensed clinical social worker, licensed psychologist, licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology, or a licensed physician who has completed a residency in psychiatry. Psychotherapy performed by the applicant's supervisor shall not be counted toward the professional experience requirement.

(c) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall

encourage, its students to undergo individual or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution is encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

(d) The board shall also make recommendations regarding similar provisions for other psychotherapeutic professions under its auspices after study and consultation with those professions.

SEC. 5. Section 4980.43 of the Business and Professions Code is amended to read:

4980.43. (a) For all applicants, a minimum of two calendar years of supervised experience is required, which experience shall consist of 3,000 hours obtained over a period of not less than 104 weeks. Not less than 1,500 hours of experience shall be gained subsequent to the granting of the qualifying master's or doctor's degree. No hours of experience may be gained prior to becoming a trainee. All experience shall be gained within the six years immediately preceding the date the application for licensure was filed, except that hours of clinical experience gained in the supervised practicum required by subdivision (b) of Section 4980.40 shall be exempt from this six-year requirement.

(b) Experience as specified in Section 4980.40 may be gained as a trainee in the following settings: a governmental entity, a school, college, or university, a nonprofit and charitable corporation, or a licensed health facility, if the experience is gained by the trainee solely as part of the position for which he or she is employed.

(c) Experience as specified in Section 4980.40 may be gained as an intern as specified in subdivision (b), or when employed in a private practice setting. Employment in a private practice setting shall not commence until the applicant has been registered as an intern. An intern employed in a private practice setting shall not pay his or her employer for supervision and shall receive fair remuneration from his or her employer.

(d) All interns shall register with the board in order to be credited for postdegree hours of experience gained toward licensure, regardless of the setting where those hours are to be gained. Except as provided in subdivision (e), all postdegree hours shall be gained as a registered intern.

(e) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration, within 90 days of the granting of the qualifying master's or doctor's degree and is thereafter granted the intern registration by the board.

(f) Trainees and interns shall not receive any remuneration from patients or clients, and shall only be paid by their employer.

(g) Trainees and interns shall only perform services at the place where their employer regularly conducts business, and shall have no proprietary interest in that business.

SEC. 6. Section 4980.44 of the Business and Professions Code is

amended to read:

4980.44. An unlicensed marriage, family, and child counselor intern employed under this chapter shall:

(a) Have earned at least a master's degree as specified in Section 4980.40.

(b) Be registered with the board prior to the intern performing any duties, except as otherwise provided in subdivision (e) of Section 4980.43.

(c) File for renewal of registration annually for a maximum of five years after initial registration with the board. Each person who registers or has registered as an intern may keep that status for a total of six years.

(d) Be permitted to continue his or her intern registration status and continue to gain hours of experience in all allowable work settings, except private practice, through December 31, 1989, if that person was granted an intern registration prior to January 1, 1983, which expires prior to the completion of the 3,000-hour experience requirement specified in Section 4980.43.

(e) Inform each client or patient prior to performing any professional services that he or she is unlicensed and under the supervision of a licensed marriage, family, and child counselor, licensed clinical social worker, licensed psychologist, licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology, or a licensed physician who has completed a residency in psychiatry and who is described in subdivision (f) of Section 4980.40, whichever is applicable. Continued employment as an unlicensed marriage, family, and child counselor intern shall cease after six years unless the requirements of subdivision (d) of this section or subdivision (g) of Section 4980.40 are met.

SEC. 7. Section 4980.45 of the Business and Professions Code is amended to read:

4980.45. (a) A licensed professional in private practice who is a marriage, family, and child counselor, a psychologist, a clinical social worker, a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology, or a licensed physician who has completed a residency in psychiatry and who is described in subdivision (f) of Section 4980.40 may supervise or employ, at any one time, no more than two unlicensed marriage, family, and child counselor registered interns.

(b) Within 30 days of employment or termination of employment, a registered intern employed by a marriage, family, and child counselor, psychologist, clinical social worker, licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology, or a licensed physician who has completed a residency in psychiatry and who is described in subdivision (f) of Section 4980.40, in a private practice, shall notify the board in writing of the employment or termination of employment. The notice shall include the name of the registered intern, the full name and business address

of the employer, and the date employment commenced or terminated. If an intern fails to notify the board within 30 days after the date of his or her employment or termination of employment, the board shall not accept any hours of experience gained during that period for the purposes of meeting the experience requirements for licensure.

SEC. 8. Section 4980.50 of the Business and Professions Code is amended to read:

4980.50. Every applicant who meets the educational and experience requirements and applies for a license as a marriage, family, and child counselor shall be examined by the board. The examinations shall be as set forth in subdivision (g) of Section 4980.40. The examinations shall be given at least twice a year at such time and place and under such supervision as the board may determine. The board shall examine the candidate with regard to his or her knowledge and professional skills and his or her judgment in the utilization of appropriate techniques and methods.

The board shall retain all written examinations for at least one year following the date of the examinations. The board shall keep an accurate record of all oral examinations for at least one year following the date of the examinations.

An applicant who has qualified pursuant to this chapter shall be issued a license as a marriage, family, and child counselor in such form as the board may deem appropriate.

SEC. 9. Section 4980.54 of the Business and Professions Code is amended to read:

4980.54. (a) The Legislature recognizes that the education and experience requirements in this chapter constitute only minimal requirements to assure that an applicant is prepared and qualified to take the licensure examinations and, if he or she passes those examinations, to begin practice.

(b) In order to continuously improve the competence of licensed marriage, family, and child counselors and as a model for all psychotherapeutic professions, the Legislature encourages all licensees to regularly engage in continuing education related to the profession or scope of practice as defined in this chapter.

SEC. 10. Section 4980.80 of the Business and Professions Code is amended to read:

4980.80. The board may issue a license to any person who, at the time of application, holds a valid license issued by a board of marriage counselor examiners or corresponding authority of any state, provided, in its opinion, the requirements for that licensure are substantially the equivalent of this chapter, and upon payment of the fees specified. Issuance of the license is further conditioned upon the person's completion of the following coursework or training:

(a) A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors which shall include areas of study as specified in Section 4980.41.

(b) A minimum of seven contact hours of training or coursework

in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(c) A minimum of 10 contact hours of training or coursework in human sexuality, as specified in Section 25, and any regulations promulgated thereunder.

(d) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(e) With respect to human sexuality and alcoholism and other chemical substance dependency, the board may accept training or coursework acquired out of state.

SEC. 11. Section 4980.90 of the Business and Professions Code is amended to read:

4980.90. With respect to those persons who are not licensed in another state, the board may allow any person to be examined who, in its opinion, has met the education and experience requirements for licensure while residing outside of California, or education outside California and experience within California, that are substantially the equivalent of this chapter provided that:

(a) He or she has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board.

(b) He or she has completed a two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors which shall include areas of study as specified in Section 4980.41.

(c) He or she has completed a minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(d) He or she has completed a minimum of 10 contact hours of training or coursework in sexuality as specified in Section 25, and any regulations promulgated thereunder.

(e) He or she has completed a minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(f) With respect to human sexuality and alcoholism and other chemical substance dependency, the board may accept training or coursework acquired out of state.

SEC. 12. Section 4982 of the Business and Professions Code is amended to read:

4982. The board may refuse to issue an intern registration or a license, or may suspend or revoke the license or intern registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire

into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration 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 Section 1203.4 of the Penal Code allowing any such person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4211, or of any alcoholic beverage to the extent, or in such manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that such use impairs the ability of such person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage, family, and child counseling services.

(d) Gross negligence or incompetence in the performance of marriage, family, and child counseling.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting any unlicensed or unregistered person to

engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage, family, and child counselor.

(*l*) Performing, or holding one's self out as being able to perform, or offering to perform, or permitting any trainee or intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner which is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any intern or trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding one's self out as being able to perform, professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license

authorized by this chapter.

(t) Permitting a trainee or registered intern under one's supervision or control to perform, or permitting the trainee or registered intern to hold one's self out as competent to perform, professional services beyond the trainee's or registered intern's level of education, training, or experience.

SEC. 13. Section 4982.25 of the Business and Professions Code is amended to read:

4982.25. The board may deny any application, or may suspend or revoke any license or registration issued under this chapter, for any of the following:

(a) The revocation, suspension, or other disciplinary action imposed by another state on a license, certificate, or registration issued by that state to practice marriage counseling or marriage, family, and child counseling, issued by that state to a licensee, shall constitute grounds for the disciplinary action for unprofessional conduct against the licensee or registrant in this state. A certified copy of the decision or judgment of the other state shall be conclusive evidence of that action.

(b) The revocation, suspension, or other disciplinary action by the State Psychology Examining Committee, or equivalent action in another state, of a license or certificate to practice psychology issued by this state or another state to a licensee or registrant, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee or registrant under this chapter.

(c) The revocation, suspension, or other discipline by the board of a license or certificate to practice as a clinical social worker or educational psychologist to a licensee shall also constitute grounds for disciplinary action for unprofessional conduct against such licensee or registrant under this chapter.

SEC. 14. Section 4984.4 of the Business and Professions Code is amended to read:

4984.4. A license which is not renewed within five years after its expiration may not be renewed, restored, reinstated, or reissued thereafter, but the licensee may apply for and obtain a new license if:

(a) No fact, circumstance, or condition exists which, if the license were issued, would justify its revocation or suspension.

(b) He or she pays all of the fees which would be required of him or her if he or she were then applying for a license for the first time and passes the licensing examinations.

CHAPTER 739

An act to amend Section 42001.1 of, and to add Section 22526 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 22526 is added to the Vehicle Code, to read:

22526. (a) A driver of a vehicle shall not enter an intersection or marked crosswalk, notwithstanding any official traffic control signal indication to proceed, unless there is sufficient space on the other side of the intersection or marked crosswalk to accommodate the vehicle driven without obstructing the through passage of vehicles from either side.

(b) A driver of a vehicle which is making a turn at an intersection who is facing a steady circular yellow or yellow arrow signal shall not enter the intersection or marked crosswalk unless there is sufficient space on the other side of the intersection or marked crosswalk to accommodate the vehicle driven without obstructing the through passage of vehicles from either side.

(c) A local authority may post appropriate signs at the entrance to intersections indicating the prohibition in subdivisions (a) and (b).

(d) A violation of this section is a parking violation and is not a violation of a law relating to the safe operation of vehicles.

(e) This section shall be known and may be cited as the Anti-Gridlock Act of 1987.

SEC. 2. Section 42001.1 of the Vehicle Code is amended to read:

42001.1. (a) Every person convicted of an infraction for a violation of Section 2815 or a violation of Section 22526 at an intersection posted pursuant to subdivision (c) of Section 22526 shall be punished as follows:

(1) For a first conviction, a fine of not less than fifty dollars ($50) nor more than one hundred dollars ($100).

(2) For a second conviction within a period of one year, a fine of not less than one hundred dollars ($100) nor more than two hundred dollars ($200).

(3) For a third or any subsequent conviction within a period of two years, a fine of not less than two hundred fifty dollars ($250) nor more than five hundred dollars ($500).

(b) In addition to the fine specified in subdivision (a), the court may order the department to suspend the driver's license for up to 30 days of any person convicted of a third or any subsequent conviction of Section 2815 within a period of two years, and the department shall suspend the license for the period of time so ordered.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 740

An act to amend Sections 4823, 4824, 4825, 4841, 4850, and 4870 of, and to add Sections 4842.5 and 4856 to, the Public Utilities Code, relating to motor transportation brokers, and making an appropriation therefor.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 4823 of the Public Utilities Code is amended to read:

4823. (a) The commission shall issue a motor transportation broker's license to an applicant that it finds and determines is fit, willing, and able to act as a broker for transportation as authorized by the license and to comply with this chapter and the rules and orders of the commission.

(b) The commission shall not issue a motor transportation broker's license to any applicant who, in the commission's determination, regularly acts as a shipper, consignee, or consignor of freight, unless the applicant held a license on June 30, 1987.

SEC. 2. Section 4824 of the Public Utilities Code is amended to read:

4824. (a) A motor transportation broker may issue invoices to shippers, consignees, or consignors for transportation service on behalf of a motor carrier. An invoice shall include the identity of the motor carrier performing the transportation service, the number of the motor carrier's permit, and the motor carrier's applicable tariff for the transportation service.

(b) A motor transportation broker which issues invoices on behalf of a motor carrier shall remit to the motor carrier performing transportation service the full amount of the motor carrier's filed rate.

(c) The commission shall require that every motor transportation broker file with the commission a bond, policy of insurance, or other security in an amount and form approved by the commission guaranteeing that all money received for the payment of transportation charges is paid to the motor carrier providing the transportation. Any motor transportation broker which the

commission finds and determines does not issue invoices or otherwise handle money on behalf of a motor carrier is exempt from this requirement. In addition to any other penalty, the commission shall suspend or revoke the license of any motor transportation broker violating this section.

SEC. 3. Section 4825 of the Public Utilities Code is amended to read:

4825. (a) A motor transportation broker's license permits the broker to do all of the following:

(1) Offer its services to motor carriers, consignors, consignees, and shippers without limitation to specified carriers, consignors, consignees, or shippers.

(2) Issue invoices for its services to motor carriers, consignors, consignees, and shippers.

(3) Receive compensation from more than one party to the same transportation transaction.

(b) A motor transportation broker may collect from the motor carrier an agreed-upon commission for brokerage service of not more than 10 percent of the carrier's applicable rate for the transportation service.

SEC. 4. Section 4841 of the Public Utilities Code is amended to read:

4841. The commission may regulate the operations, practices, and contracts of motor transportation brokers and may adopt rules applicable to the operations of motor transportation brokers, but shall not regulate the rates and charges of motor transportation brokers for brokerage or brokerage service except as provided in subdivision (b) of Section 4825, Section 4842.5, and paragraph (4) of subdivision (a) of Section 4870.

SEC. 5. Section 4842.5 is added to the Public Utilities Code, to read:

4842.5. No person holding both a motor carrier permit or certificate and a motor transportation broker's license shall charge a lower rate for brokered service than the rate filed by that person as a motor carrier if there is a likelihood of confusion between the person's business identity as a broker and as a carrier.

SEC. 6. Section 4850 of the Public Utilities Code is amended to read:

4850. (a) A motor transportation broker shall charge or receive no compensation, commission, or payment from any motor carrier under any of the following circumstances:

(1) The motor transportation broker owns or has any material beneficial interest in the shipment transported by the motor carrier.

(2) The shipper, consignor, or consignee owns or controls the motor transportation broker.

(3) The motor transportation broker owns or controls the motor carrier.

(b) The commission may determine any question of fact arising under this section.

SEC. 7. Section 4856 is added to the Public Utilities Code, to read:

4856. No motor transportation broker shall engage the services of an unauthorized motor carrier.

SEC. 8. Section 4870 of the Public Utilities Code is amended to read:

4870. (a) The commission may suspend or revoke any license issued pursuant to this chapter if it makes any of the following determinations:

(1) The licensee is not a fit and proper person to hold the license.

(2) The licensee, in acting as a motor transportation broker, has engaged in false advertising and false representation in violation of the laws of this state or of any ordinance or regulation of a local agency.

(3) The licensee has sold, offered for sale, or negotiated for sale, transportation by any carrier, that, under the laws of this state, is conducted in an unauthorized manner or in a manner contrary to the public interest, or that sale, offer, negotiation, or transportation is in violation of this chapter or the general orders or rules of the commission issued pursuant to this chapter.

(4) The licensee has offered for sale, or negotiated for sale, transportation by any motor carrier at a rate less than the motor carrier's rate as filed with the commission.

(b) As an alternative to the cancellation, revocation, or suspension of a license, the commission may impose upon the holder of the license a civil penalty of not more than five thousand dollars ($5,000) for a first offense and not more than ten thousand dollars ($10,000) for any second or succeeding offense. All penalties collected shall be deposited at least once each month in the State Treasury to the credit of the Transportation Rate Fund.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 741

An act to amend Section 3543 of the Public Utilities Code, relating to carriers.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 3543 of the Public Utilities Code is amended to read:

3543. No highway carrier shall operate any motor vehicle over any public highway unless there is displayed on the vehicle a distinctive identifying symbol in the form prescribed by the commission, showing the classification to which the carrier belongs.

No such identifying symbol shall be displayed on any vehicle until a permit under this chapter, or a certificate of public convenience and necessity under Part 1 (commencing with Section 201) of Division 1, has been issued to the carrier. The identifying symbols displayed by highway carriers subject to the Interstate Commerce Commission Order Ex Parte No. MC-41, Identification of Motor Carrier Vehicles, November 17, 1954, effective January 3, 1955, shall serve in lieu of the display requirements of this section, if the identifying symbols have been recorded by the highway carrier with the commission.

The identifying symbol shall be displayed on both the left and right doors of the cab of the vehicle.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 742

An act to amend Section 4 of Chapter 1614 of the Statutes of 1984, relating to youth, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 4 of Chapter 1614 of the Statutes of 1984 is amended to read:

Sec. 4. The sum of two hundred thousand dollars ($200,000) is hereby appropriated from the General Fund to the Office of Criminal Justice Planning for the purposes of this act. The Office of Criminal Justice Planning or the contracting corporation shall seek any federal and private funds available for the purposes of this act.

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 continue to provide toll-free emergency referral service and provide funding for necessary staff which would otherwise be insufficient if reduced due to the receipt of federal or private funds, it is necessary that this act take effect immediately.

CHAPTER 743

An act to amend Section 1569.18 of the Health and Safety Code, relating to residential care facilities.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 1569.18 of the Health and Safety Code is amended to read:

1569.18. (a) A fee adjusted by facility and capacity shall be charged by the department for the issuance or renewal of a license to operate a residential care facility for the elderly or for processing any application therefor. The amount of the fee is for the purpose of financing a portion of the application and renewal processing costs and the activities specified in subdivision (b). The fee shall be assessed as follows:

Capacity	Original Application	Renewal Application
1– 6	$100	$100
7–15	$150	$150
16–49	$200	$200
50+	$250	$250

No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a facility licensed under this chapter which serves six or fewer persons.

(b) The revenues collected from licensing fees pursuant to this section when appropriated, shall be utilized by the department to finance postlicensure inspections pursuant to Section 1569.24, to allow increased monitoring of facilities with a history of noncompliance with licensing laws and regulations pursuant to this chapter, and other administrative activities in support of the licensing program. The revenues collected shall be used in addition to any other funds appropriated in support of the licensing program.

The department shall not utilize any portion of these revenues sooner than 30 days after notification in writing of the purpose and use, as approved by the Department of Finance, the Joint Legislative Budget Committee and the chairpersons of the committee in each house that considers appropriations for each fiscal year. For fiscal year 1986–87 and thereafter, the department shall submit a budget change proposal to justify any positions or any other related support costs on an ongoing basis.

(c) These fees applicable to residential care facilities for the elderly shall not be effective unless licensing fees are established for all adult residential facilities licensed by the State Department of Social Services.

(d) A residential care facility for the elderly may use a bona fide business check to pay the license fee required under this section.

(e) Failure to pay required license fees, including the finding of insufficient funds to cover bona fide business checks submitted for this purpose, may constitute grounds for denial of a license or special permit or refusal to renew a license or special permit.

CHAPTER 744

An act to amend Section 148.5 of the Penal Code, relating to crime.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 148.5 of the Penal Code is amended to read:

148.5. (a) Every person who reports to any peace officer listed in Section 830.1 or 830.2, district attorney, or deputy district attorney that a felony or misdemeanor has been committed, knowing the report to be false, is guilty of a misdemeanor.

(b) Every person who reports to any other peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, that a felony or misdemeanor has been committed, knowing the report to be false, is guilty of a misdemeanor if (1) the false information is given while the peace officer is engaged in the performance of his or her duties as a peace officer and (2) the person providing the false information knows or should have known that the person receiving the information is a peace officer.

(c) Except as provided in subdivisions (a) and (b), every person who reports to any employee who is assigned to accept reports from citizens, either directly or by telephone, and who is employed by a state or local agency which is designated in Section 830.1, 830.2, subdivision (f) of 830.3, Section 830.31, or 830.4, that a felony or misdemeanor has been committed, knowing the report to be false, is guilty of a misdemeanor if (1) the false information is given while the employee is engaged in the performance of his or her duties as an agency employee and (2) the person providing the false information knows or should have known that the person receiving the information is an agency employee engaged in the performance of the duties described in this subdivision.

(d) This section does not apply to reports made by persons who are required by statute to report known or suspected instances of child abuse, dependent adult abuse, or elder abuse.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 745

An act to amend Sections 62.8, 308, 502, 503, 522, 651, 651.5, 655, 658, 663, and 677 of, and to repeal Section 63 of, the Harbors and Navigation Code, relating to boating and waterways.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 62.8 of the Harbors and Navigation Code is amended to read:

62.8. For the purpose of disseminating information relating to its activities, powers, duties, or functions, the department may issue publications, construct and maintain exhibits, and perform such acts and carry on such functions as in the opinion of the director will best tend to disseminate that information.

The publications may be distributed free of charge to public libraries and to other state departments and state officers. The department may exchange copies with contemporary publications.

All money received by the department from the sale of publications, exclusive of money received by any separate division of the department from the sale of publications, shall be paid into the State Treasury to the credit of the Harbors and Watercraft Revolving Fund.

SEC. 2. Section 63 of the Harbors and Navigation Code is repealed.

SEC. 3. Section 308 of the Harbors and Navigation Code is amended to read:

308. Every person who moors any vessel of any kind, to any buoy or beacon placed in the waters of California by authority of the United States Coast Guard, or who in any manner hangs on to the same, with any vessel, or who willfully removes, damages, or destroys any such buoy or beacon, or any part thereof, or who cuts down, removes, damages, or destroys any beacon or beacons erected on land in this state by that authority, is, for every offense, guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment not exceeding six months.

SEC. 4. Section 502 of the Harbors and Navigation Code is amended to read:

502. (a) Except as provided in Article 1.5 (commencing with Section 410) of Chapter 1 of Division 3, every person has a lien dependent upon possession of the vessel for the compensation to which he or she is legally entitled for services rendered to or storage of any vessel subject to registration with the Department of Motor Vehicles. The lien shall arise at the time a written statement of lien is sent to the registered owner of the vessel which specifies the charges for services or storage rendered and states that the vessel is subject to sale pursuant to the California Boater's Lien Law.

(b) Notwithstanding subdivision (a), no lien provided by this section for storage or service provided upon the request of any person other than the legal owner as shown on the registration certificate of the vessel shall be valid against the interest of the legal owner to the extent that the lien exceeds one thousand five hundred dollars ($1,500) unless the person performing the storage or service obtains the consent of the legal owner to the amount of the excess. The legal owner may limit his or her consent to a specified dollar amount or period of time. The lien claimant shall give actual notice in writing, prior to exceeding that amount, either by personal service or by registered mail to the legal and registered owner or owners as named and at the addresses as shown on the registration certificate, on a standard form provided by the department, containing a description of the storage or services, or both, a description and registration number of the vessel, the name of the registered owner or owners, the dollar amount or rate of the charges for the storage or services, and a statement in boldface type that, with respect to storage charges, consent of the legal owner shall be presumed unless the legal owner notifies the lien claimant within 15 days of receipt of the request for consent that he or she declines to consent to the storage. The lien claimant shall notify the legal owner as shown on the registration certificate of the vessel, by certified mail, that the vessel is subject to sale pursuant to the California Boater's Lien Law and that the lien claimed exceeds one thousand five hundred dollars ($1,500).

(c) Notwithstanding subdivision (b), any claim for the cost of services may exceed the estimate given therefor by an amount not in excess of 10 percent thereof and the lien of the lien claimant shall be valid against the legal owner to the full amount of such excess to the same extent as would be a lien for the original estimate.

(d) With respect to claims for storage charges, a legal owner shall be presumed to consent to storage charges if he or she fails to respond to the request for consent set forth in subdivision (b) within 15 days after receipt thereof, such response to be addressed to the lien claimant at the address stated in the request for consent. In addition, consent in all cases is presumed for the 30-day period immediately following the giving of the request for consent notice.

(e) The legal owner may, upon declining consent, remove the vessel from the lien claimant only upon satisfying the lien of the lien claimant.

(f) Any lien arising under this section shall be extinguished, and no lien sale shall be conducted unless, 60 days after the lien arises, the lienholder does either of the following:

(1) Applies to the department for an authorization to conduct a lien sale.

(2) Files an action on the claim in court.

(g) Nothing in this section shall impair any rights or remedies which are otherwise available to the lien claimant against the registered owner under any other provisions of law.

SEC. 5. Section 503 of the Harbors and Navigation Code is amended to read:

503. (a) A lienholder shall apply to the department for the issuance of an authorization to conduct a lien sale pursuant to the provisions of this section for any vessel with a value determined to be over one thousand five hundred dollars ($1,500). A fee shall be charged by the department and may be recovered by the lienholder if a lien sale is conducted or if the vessel is redeemed. The application shall be executed under penalty of perjury and shall include all of the following information:

(1) A description of the vessel, including make, hull identification number, and state of registration, to the extent available.

(2) The names and addresses of the registered and legal owners of the vessel, if ascertainable from the registration certificate within the vessel, and the name and address of any person whom the lienholder knows or reasonably should know claims a proprietary interest in the vessel.

(3) A statement of the amount of the lien and the facts which give rise to the lien. The statement shall include, as a separate item, an estimate of any additional storage costs accruing pending the lien sale.

(b) Upon receipt of an application made pursuant to subdivision (a), the department shall within 15 days thereafter do the following:

(1) Notify the vessel registry agency of a foreign state of the pending lien sale, if the vessel bears indicia of registration in that state.

(2) By mail, send a notice, a copy of the application, and a return envelope preaddressed to the department to the registered and legal owners at their addresses of record with the department, and to any other person whose name and address is listed in the application.

(3) A vessel registration stop order or title transfer stop order shall be applied by the department at the time the lien claimant requests authorization to conduct the sale.

(c) The notice required pursuant to subdivision (b) shall include all of the following statements:

(1) An application has been made with the department for authorization to conduct a lien sale.

(2) Each person to whom notice is sent pursuant to subdivision (b) is entitled to a hearing in court if that person so desires.

(3) If a hearing in court is desired, a declaration of opposition,

signed under penalty of perjury, is required to be signed and returned to the department within 15 days of the date that the notice required pursuant to subdivision (b) was mailed.

(4) If the declaration of opposition is signed and returned to the department, the lienholder will be allowed to sell the vessel only if he or she obtains a court judgment or a subsequent release from the declarant.

(5) If a court action is filed, the declarant will be served by mail with legal process in the court proceedings at the address shown on the declaration of opposition and may appear to contest the claim.

(6) The person may be liable for court costs if a judgment is entered in favor of the lienholder.

(d) If the department receives the declaration of opposition in the time provided, the department shall notify the lienholder within 16 days of the receipt of the declaration of opposition that a lien sale shall not be conducted unless the lienholder files an action in court within 60 days of the notice. A lien sale of the vessel shall not be conducted unless judgment is subsequently entered in favor of the lienholder or the declarant subsequently releases his or her interest in the vessel.

(e) Service of legal process on the declarant, with return receipt requested signed by the declarant or an authorized agent of the declarant at the address shown on the declaration of opposition, shall be effective. Return of a declaration of opposition shall constitute consent by the declarant to service of legal process for the desired court hearing upon him or her in the foregoing manner. Notwithstanding subdivision (d) of Section 415.3 of the Code of Civil Procedure, if the lienholder has attempted service upon declarant by that method at the address shown on the declaration of opposition and the mail has been returned unclaimed, the department shall promptly authorize the sale.

(f) Upon receipt of authorization to conduct the lien sale, the lienholder shall do all of the following:

(1) At least 10 days, but not more than 30 days, prior to the lien sale, not counting the day of the sale, give notice of the sale by advertising once in a newspaper of general circulation published in the county in which the vessel is located. If there is no newspaper published in the county, notice shall be given by posting a notice of sale form in three of the most public places in the area in which the vessel is located and at the place where the vessel is to be sold for 10 consecutive days prior to and including the day of the sale.

(2) Send a notice of pending lien sale 20 days prior to the sale, but not counting the day of sale, by mail with return receipt requested, to each of the following:

(A) The registered and legal owners of the vessel, if registered in this state.

(B) All persons known to have an interest in the vessel.

(C) The department.

(g) Upon receipt of the notice, the department shall mark its

records and thereafter notify any person having a proprietary interest in the vessel that there is a pending lien sale and that title will not be transferred until the lien is satisfied or released.

(h) All notices required by this section, including the notice forms prescribed by the department, shall specify the make, hull identification number, and state of registration, if available, and the specific date, exact time, and place of sale.

SEC. 6. Section 522 of the Harbors and Navigation Code is amended to read:

522. (a) Any hulk, derelict, wreck, or parts of any ship, vessel, or other watercraft sunk, beached, or allowed to remain in an unseaworthy or dilapidated condition upon publicly owned submerged lands, salt marsh, or tidelands within the corporate limits of any municipal corporation or other public corporation or entity having jurisdiction or control over those lands, without its consent expressed by resolution of its legislative body, for a period longer than 100 days without a watchman or other person being maintained upon or near and in charge of the property, is abandoned property.

Thereafter, that municipal corporation or other public corporation or entity may cause the property to be sold, destroyed, or otherwise disposed of in such manner as it may determine is expedient or convenient. Any such sale shall vest complete title in the purchaser who shall forthwith take steps to remove the property. Any proceeds derived from the sale shall be the property of the municipal corporation or other public corporation or entity.

(b) However, if the owner of the property securely affixes to the property a notice in plain view setting forth the owner's name and address and claim of ownership, together with the name and address of an agent or representative whom the owner may designate to act within the State of California if the owner does not reside in the state, and files a copy of the notice with the secretary of the municipal corporation or other public corporation or entity having jurisdiction or control over the lands at least five days prior to the removal, the municipal corporation or other public corporation or entity may not sell, destroy, or otherwise dispose of the property until the corporation or entity has first given the owner or the owner's agent, at the address specified in the claim of ownership, 30 days' notice to remove or cause the property to be removed, and then only if the property is not removed by the owner or the owner's agent within that time or such reasonable extensions of time as the corporation or entity may grant by resolution. If a registration number appears on the watercraft, the municipal corporation or other public corporation or entity shall send the notice to the last registered owner and the disposition shall be handled as a lien sale under Section 504.

SEC. 7. Section 651 of the Harbors and Navigation Code is amended to read:

651. As used in this chapter, unless the context clearly requires a different meaning:

(a) "Department" means the Department of Boating and Waterways.

(b) "Director" means the Director of Boating and Waterways.

(c) "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on water, except the following:

(1) A seaplane on the water.

(2) A watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to or guided on such permanently fixed course by means of a mechanical device on a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled, or by means of a mechanical device attached to the watercraft itself.

(d) "Boat" means any vessel which is any of the following:

(1) Manufactured or used primarily for noncommercial use.

(2) Leased, rented, or chartered to another for the latter's noncommercial use.

(3) Engaged in the carrying of six or fewer passengers, including those for-hire vessels carrying more than three passengers while using inland waters of the state that are not declared navigable by the United States Coast Guard.

(4) Commercial vessels required to be numbered pursuant to Section 9850 of the Vehicle Code.

(e) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(f) "Owner" is a person having all the incidents of ownership, including the legal title, of a vessel whether or not that person lends, rents, or pledges the vessel; the person entitled to the possession of a vessel as the purchaser under a conditional sale contract; or the mortgagor of a vessel. "Owner" does not include a person holding legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state or to any county, city, district, or political subdivision of the state under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(g) "Legal owner" is a person holding the legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state, or to any county, city, district, or political subdivision of the state, under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(h) "Registered owner" is the person registered by the Department of Motor Vehicles as the owner of the vessel.

(i) "Waters of this state" means any waters within the territorial limits of this state.

(j) "Person" means an individual, partnership, firm, corporation,

association, or other entity, but does not include the United States, the state, or a municipality or subdivision thereof.

(k) "Operator" means the person on board who is steering the vessel while underway.

(*l*) "Undocumented vessel" means any vessel which is not required to have and does not have a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(m) "Use" means operate, navigate, or employ.

(n) "State" means a state of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

(o) "State of principal use" means the state on which waters a vessel is used or intended to be used most during a calendar year.

(p) "Passenger" means every person carried on board a vessel other than any of the following:

(1) The owner or his representative.

(2) The operator.

(3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.

(4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(q) "Associated equipment" means any of the following, excluding radio equipment:

(1) Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of the system, part, or component.

(2) Any accessory or equipment for, or appurtenance to, a boat.

(3) Any marine safety article, accessory, or equipment intended for use by a person on board a boat.

(r) "Manufacturer" means any person engaged in any of the following:

(1) The manufacture, construction, or assembly of boats or associated equipment.

(2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.

(3) The importation into this state for sale of boats, associated equipment, or components thereof.

(s) "Drug" means any substance or combination of substances other than alcohol which could so affect the nervous system, brain, or muscles of a person as to impair to an appreciable degree his ability to operate a vessel in the manner that an ordinarily prudent man, in full possession of his faculties, using reasonable care, would operate a similar vessel under like conditions.

(t) "Water skis, an aquaplane, or a similar device" includes all forms of water skiing, barefoot skiing, skiing on skim boards, knee

boards, or other contrivances, parasailing, ski kiting, or any activity where a person is towed behind or alongside a boat.

SEC. 8. Section 651.5 of the Harbors and Navigation Code is amended to read:

651.5. The Department of Motor Vehicles shall provide every person who originally registers, or who acquires the ownership certificate of, a vessel less than 65 feet in length with a copy of guidelines for safe vessel operation.

SEC. 9. Section 655 of the Harbors and Navigation Code is amended to read:

655. (a) No person shall use any vessel or manipulate water skis, an aquaplane, or a similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person. The department shall adopt regulations for the use of vessels, water skis, aquaplanes, or similar devices in a manner which will minimize the danger to life, limb, or property consistent with reasonable use of the equipment for the purpose for which it was designed.

(b) No person shall operate any vessel or manipulate water skis, an aquaplane, or a similar device while under the influence of intoxicating liquor, any drug, or the combined influence of intoxicating liquor and any drug.

(c) No person shall operate any vessel or manipulate any water skis, aquaplane, or similar device who has 0.10 percent or more, by weight, of alcohol in his or her blood.

(d) No person shall operate any vessel, or manipulate water skis, an aquaplane, or a similar device who is addicted to the use of any drug. This subdivision does 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.

(e) No person shall operate any vessel or manipulate water skis, an aquaplane, or a similar device while under the influence of intoxicating liquor, any drug, or under the combined influence of intoxicating liquor and any drug, and while so operating, do any act forbidden by law, or neglect any duty imposed by law in the use of the vessel, water skis, aquaplane, or similar device, which act or neglect proximately causes bodily injury to any person other than himself or herself.

(f) For purposes of this section, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

In any prosecution under subdivision (c), 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 operation of a vessel 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 operation.

(g) Upon the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person while operating a vessel or

manipulating water skis, an aquaplane, or a similar device under the influence of an alcoholic beverage in violation of subdivision (b) or (e), the amount of alcohol in the person's blood at the time of the test, as shown by chemical analysis of that person's blood, breath, or urine, shall give rise to the following presumptions affecting the burden of proof:

(1) If there was at that time less than 0.05 percent, by weight, of alcohol in the person's blood, it shall be presumed that the person was not under the influence of an alcoholic beverage at the time of the alleged offense.

(2) If there was at that time 0.05 percent or more, but less than 0.10 percent, by weight, of alcohol in the person's blood, that fact shall not give rise to any presumption that the person was or was not under the influence of an alcoholic beverage, but the fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(3) If there was at that time 0.10 percent or more, by weight, of alcohol in the person's blood, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(h) This section does not limit the introduction of any other competent evidence bearing upon the question whether the person ingested any alcoholic beverage or was under the influence of an alcoholic beverage at the time of the alleged offense.

(i) This section applies to foreign vessels using waters subject to state jurisdiction.

SEC. 10. Section 658 of the Harbors and Navigation Code is amended to read:

658. (a) No person shall operate a vessel on any waters for towing a person or persons on water skis, an aquaplane, or a similar device unless there is in the vessel a person at least 12 years of age, in addition to the operator, in a position to observe the progress of the persons being towed.

This subdivision does not apply to motorboats less than 16 feet in length actually operated by the person or persons being towed and so constructed as to be incapable of carrying the operator in or on the motorboat. The department may establish rules and regulations governing the operation of those watercraft, which rules and regulations shall provide the greatest possible safety of persons and vessels.

(b) No person shall operate a vessel on any waters of this state towing a person or persons on water skis, an aquaplane, or a similar device nor shall any person engage in water skiing, aquaplaning, or other similar activity at any time between the hours from sunset to sunrise, except that those hours do not apply to those waters of this state as to which prohibited hours for those activities are fixed by local ordinances, laws, or regulations enacted pursuant to this chapter.

(c) Subdivisions (a) and (b) of this section do not apply to a performer engaged in a professional exhibition or a person or persons engaged in a regatta, vessel or water ski race, or other marine event authorized pursuant to Section 268.

(d) No person shall operate or manipulate any vessel, towrope, or other device by which the direction or location of water skis, an aquaplane, or a similar device may be affected or controlled so as to cause the water skis, aquaplane, or similar device, or any person thereon, to collide with, or strike against, any object or person. This subdivision does not apply to collisions of two or more persons on water skis, aquaplanes, or similar devices being towed by the same vessel.

(e) No person shall operate water skis, an aquaplane, or a similar device so as to endanger the life, limb, or property of any person.

SEC. 11. Section 663 of the Harbors and Navigation Code is amended to read:

663. Every peace officer of this state or of any city, county, city and county, or other political subdivision of the state shall enforce this chapter and any regulations adopted by the department pursuant to this chapter and in the exercise of that duty shall have the authority to stop and board any vessel subject to this chapter, where the peace officer has probable cause to believe that a violation of state law or regulations or local ordinance exists.

SEC. 12. Section 677 of the Harbors and Navigation Code is amended to read:

677. (a) Except for urgent and immediate concern for the safety of those aboard a vessel, no person shall abandon a vessel upon a public waterway or public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

(b) The abandonment of any vessel in a manner as provided in subdivision (a) shall constitute prima facie evidence that the last registered owner of record, not having notified the appropriate registration or documenting agency of any relinquishment of title or interest therein, is responsible for the abandonment and is thereby liable for the cost of removal and disposition of the vessel.

(c) Violation of this section is an infraction and shall be punished by a fine of not less than fifty dollars ($50).

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 746

An act to amend Section 3181 of the Civil Code, and to add Section 4107.7 to the Public Contract Code, relating to hazardous materials.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 3181 of the Civil Code is amended to read:

3181. Except for an original contractor, any person mentioned in Section 3110, 3111, or 3112, or in Section 4107.7 of the Public Contract Code, or furnishing provisions, provender, or other supplies, may serve a stop notice upon the public entity responsible for the public work in accordance with this chapter.

SEC. 2. Section 4107.7 is added to the Public Contract Code, to read:

4107.7. If a contractor who enters into a contract with a public entity for investigation, removal or remedial action, or disposal relative to the release or presence of a hazardous material or hazardous waste fails to pay a subcontractor registered as a hazardous waste hauler pursuant to Section 25163 of the Health and Safety Code within 10 days after the investigation, removal or remedial action, or disposal is completed, the subcontractor may serve a stop notice upon the public entity in accordance with Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of Division 3 of the Civil Code.

CHAPTER 747

An act to amend Sections 34501.9 and 40000.7 of, and to add Sections 2813.5 and 34101.5 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 2813.5 is added to the Vehicle Code, to read:

2813.5. The commissioner shall have exclusive authority in the issuance of stickers as evidence that commercial vehicles have been inspected pursuant to Section 2813 and have been found to be in compliance with minimum safety standards established by the department. The commissioner may make and enforce regulations with respect to the issuance and display of the stickers upon commercial vehicles.

(b) It is unlawful for any unauthorized person, company, corporation, or public or private entity to possess, issue, or display

upon a vehicle an unauthorized commercial vehicle safety inspection sticker or a sticker that is either a facsimile of, or is substantially similar to, that issued by the commissioner.

(c) Any violation of subdivision (b) is a misdemeanor.

SEC. 2. Section 34101.5 is added to the Vehicle Code, to read:

34101.5. (a) It is unlawful for any person, company, corporation, or public or private entity to possess or display on any cargo tank a certificate of compliance sticker unless authorized by the commissioner.

(b) It is unlawful for any person, company, corporation, or public or private entity to manufacture, possess, issue, or display on any cargo tank a sticker that is a facsimile of, or substantially similar to, the certificate of compliance sticker.

(c) It is unlawful for any person, company, corporation, or public or private entity to alter, counterfeit, or falsify any certificate of compliance sticker issued pursuant to Section 34044, or to transfer a certificate of compliance sticker to a tank other than the tank to which it was issued by the department.

(d) Any person convicted of a first violation of this section shall be punished by a fine of five hundred dollars ($500).

(e) Any person convicted of a second or subsequent violation of this section shall be punished by a fine of one thousand dollars ($1,000).

SEC. 2.5. Section 34501.9 of the Vehicle Code, as added by Chapter 70 of the Statutes of 1987, is amended to read:

34501.9. (a) Nothing in this division or the regulations adopted under this division is intended to, or shall, affect the rate of payment of wages, including, but not limited to, regular, premium, or overtime rates, paid to any person whether for on-duty hours or driving hours or otherwise.

(b) Nothing in this division or the regulations adopted under this division is intended to, or shall, affect the regulations adopted pursuant to other provisions of law concerning the rate or rates of payment of wages by any other public agency, including, but not limited to, the Industrial Welfare Commission or the Division of Labor Standards Enforcement of the Department of Industrial Relations.

SEC. 3. Section 40000.7 of the Vehicle Code is amended to read:

40000.7. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Section 2416, relating to regulations for emergency vehicles.

(b) Section 2800, relating to failure to obey an officer's lawful order or submit to a lawful inspection.

(c) Section 2800.1, relating to fleeing from a peace officer.

(d) Section 2801, relating to failure to obey a fireman's lawful order.

(e) Section 2803, relating to unlawful vehicle or load.

(f) Section 2813, relating to stopping for inspection and Section 2813.5, relating to commercial vehicle safety inspection stickers.

(g) Subdivision (b) of Section 4461 and subdivisions (b) and (c) of Section 4463, relating to disabled person placards.

(h) Section 4463.5, relating to deceptive or facsimile license plates.

(i) Section 5500, relating to the surrender of registration documents and license plates before dismantling may begin.

(j) Section 5753, relating to delivery of certificates of ownership and registration when committed by a dealer or any person while a dealer within the preceding 12 months.

(k) Section 5901, relating to dealers and lessor-retailers giving notice.

(*l*) Section 5901.1, relating to lessors giving notice and failure to pay fee.

(m) Section 8802, relating to the return of canceled, suspended, or revoked certificates of ownership, registration cards, or license plates, when committed by any person with intent to defraud.

(n) Section 8803, relating to return of canceled, suspended, or revoked documents and license plates of a dealer, manufacturer, remanufacturer, transporter, dismantler, or salesman.

SEC. 4. Section 40000.7 of the Vehicle Code is amended to read:

40000.7. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Section 2416, relating to regulations for emergency vehicles.

(b) Section 2800, relating to failure to obey an officer's lawful order or submit to a lawful inspection.

(c) Section 2800.1, relating to fleeing from a peace officer.

(d) Section 2801, relating to failure to obey a fireman's lawful order.

(e) Section 2803, relating to unlawful vehicle or load and Section 2813.5, relating to commercial vehicle safety inspection stickers.

(f) Section 2813, relating to stopping for inspection.

(g) Subdivision (b) of Section 4461 and subdivisions (b) and (c) of Section 4463, relating to disabled person placards.

(h) Section 4463.5, relating to deceptive or facsimile license plates.

(i) Section 5105.5, relating to environmental license plates.

(j) Section 5500, relating to the surrender of registration documents and license plates before dismantling may begin.

(k) Section 5753, relating to delivery of certificates of ownership and registration when committed by a dealer or any person while a dealer within the preceding 12 months.

(*l*) Section 5901, relating to dealers and lessor-retailers giving notice.

(m) Section 5901.1, relating to lessors giving notice and failure to pay fee.

(n) Section 8802, relating to the return of canceled, suspended, or revoked certificates of ownership, registration cards, or license plates, when committed by any person with intent to defraud.

(o) Section 8803, relating to return of canceled, suspended, or

revoked documents and license plates of a dealer, manufacturer, remanufacturer, transporter, dismantler, or salesman.

SEC. 5. Section 4 of this bill incorporates amendments to Section 40000.7 of the Vehicle Code proposed by both this bill and SB 543. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 40000.7 of the Vehicle Code, and (3) this bill is enacted after SB 543, in which case Section 3 of this bill shall not become operative.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 748

An act to amend Sections 25208.7, 25208.8, and 25208.17 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 25208.7 of the Health and Safety Code is amended to read:

25208.7. (a) The regional board shall make at least one inspection per year of all facilities with surface impoundments, and shall regularly review monitoring data, as necessary, to ensure that all surface impoundments comply with this article and that any equipment or programs required pursuant to this article are operating properly.

(b) Except as provided in subdivisions (c) and (d), each regional board shall establish a schedule and a notification system requiring the submission of reports to the regional board on or before January 1, 1988, by every person discharging liquid hazardous wastes or hazardous wastes containing free liquids into a surface impoundment located within the jurisdiction of the regional board. Any person discharging liquid hazardous wastes or hazardous wastes containing free liquids into a surface impoundment who receives this notice from the regional board shall submit a report to the regional board within the time specified in the notice, except that if the person has filed a report with an application for exemption, pursuant to subdivision (c) of Section 25208.5, the regional board shall not require the person to file a report.

(c) The regional board may require that the report specified in Section 25208.8 be filed by a person who has conducted a site

assessment pursuant to subdivision (a) of Section 25208.17 only after the regional board makes the determination specified in subdivision (g) of Section 25208.17.

(d) The regional board may exempt a person from submitting a report specified in Section 25208.8 if the person has ceased discharging into the surface impoundment, the person closed the surface impoundment on or before December 31, 1985, with the approval of the regional board and the department, and the board makes both of the following findings:

(1) The report is not required to determine the extent to which the hazardous waste constituents have migrated from the surface impoundment.

(2) No hazardous waste constituents are present in the vadose zone or the waters of the state beneath the surface impoundment in concentrations which pollute the vadose zone or threaten to pollute or pollute the waters of the state.

SEC. 2. Section 25208.8 of the Health and Safety Code is amended to read:

25208.8. A person who receives a notice from a regional board, pursuant to Section 25208.7, or who files an application for an exemption pursuant to Section 25208.5 or 25208.13, shall submit a hydrogeological assessment report to the regional board. A qualified person shall be responsible for the preparation of the report and shall certify its completeness and accuracy. The report shall contain, for each surface impoundment, any information required by the state board or the regional board, and all of the following information:

(a) A description of the surface impoundment, including its physical characteristics, its age, the presence or absence of a liner, a description of the liner, the liner's compatibility with the hazardous wastes discharged to the impoundment, and the design specifications of the impoundment.

(b) A description of the volume and concentration of hazardous waste constituents placed in the surface impoundment, based on a representative chemical analysis of the specific hazardous waste type and accounting for variance in hazardous waste constituents over time.

(c) A map showing the distances, within the facility, to the nearest surface water bodies and springs, and the distances, within one mile from the facility's perimeter, to the nearest surface water bodies and springs.

(d) Tabular data for each surface water body and spring shown on the map specified in subdivision (c) which indicate its flow and a representative water analysis. The report shall include an evaluation and characterization of seasonal changes and, if substantive changes result from season to season, the tabular data shall reflect these seasonal changes.

(e) A map showing the location of all wells within the facility and the locations of all wells within one mile of the facility's perimeter. The report shall include, for each well, a description of the present

use of the well, a representative water analysis from the well, and, when possible, the water well driller's report or well log.

(f) An analysis of the vertical and lateral extent of the perched water and water-bearing strata which could be affected by leachate from the surface impoundment, and the confining beds under and adjacent to the surface impoundment. This analysis shall include all of the following:

(1) Maps showing contours of equal elevation of the water surface for perched water, unconfined water, and confined groundwater required to be analyzed by this subdivision.

(2) An estimate of the groundwater flow, direction of the perched water, and all water-bearing strata on both the maps and the subsurface geologic cross sections.

(3) An estimate of the transmissivity, permeability, and storage coefficient for each perched zone of water and water-bearing strata identified on the maps specified in paragraph (1).

(4) A determination of the rate of groundwater flow.

(5) A determination of the water quality of each zone of the water-bearing strata and perched water which is identified on the maps specified in paragraph (1) and which is under, or adjacent to, the facility. This determination shall be conducted by taking samples either from upgradient of the surface impoundment or from another location which has not been affected by leakage from the surface impoundment.

(g) An indication as to whether the groundwater is contiguous with regional bodies of groundwater and the depth measured to the groundwater, including the depth measured to perched water and water-bearing strata identified on the maps specified in paragraph (1).

(h) The following climatological information:

(1) A map showing the contours for the mean annual long-term precipitation for the surrounding region within 10 miles of the surface impoundment.

(2) Calculations estimating the maximum 24-hour precipitation and maximum and minimum annual precipitation at the facility based upon direct measurement at the facility or upon measured values of precipitation from a nearby climatologically similar station.

(3) The projected volume and pattern of runoff for any streams which, in a 100-year interval, could effect the facility, including peak stream discharges associated with storm conditions.

(i) A description of the composition of the vadose zone beneath the surface impoundment. This description shall include a chemical and hydrogeological characterization of both the consolidated and unconsolidated rock material underlying the surface impoundment, and an analysis for pollutants, including those constituents discharged into the surface impoundment. This description shall also include soil moisture readings from a representative number of points around the surface impoundment's perimeter and at the maximum depth of the surface impoundment. If the regional board

determines that the use of suction type soil sampling devices are infeasible due to climate, soil hydraulics, or soil texture, the regional board may authorize the use of alternative devices. The report shall arrange all monitoring data in a tabular form so that the data, the constituents, and the concentrations are readily discernible.

(j) A measurement of the chemical characteristics of the soil made by collecting a soil sample upgradient from the impoundment or from an area which has not been affected by seepage from the surface impoundment and which is in a hydrogeologic environment similar to the surface impoundment. The measurement shall be analyzed for the same pollutants analyzed pursuant to subdivision (i).

(k) A description of the existing monitoring being conducted to detect leachate, including vadose zone monitoring, the number and positioning of the monitoring wells, the monitoring wells' distances from the surface impoundment, the monitoring wells' design data, the monitoring wells' installation, the monitoring development procedures, the sampling methodology, the sampling frequency, the chemical constituents analyzed, and the analytical methodology. The design data of the monitoring wells shall include the monitoring wells' depth, the monitoring wells' diameters, the monitoring wells' casing materials, the perforated intervals within the well, the size of the perforations, the gradation of the filter pack, and the extent of the wells' annular seals.

(*l*) Documentation demonstrating that the monitoring system and methods used at the facility can detect any seepage before the hazardous waste constituents enter the waters of the state. This documentation shall include, but is not limited to, substantiation of each of the following:

(1) The monitor wells are located close enough to the surface impoundment to identify lateral and vertical migration of any constituents discharged to the impoundment.

(2) The monitoring wells are not located within the influence of any adjacent pumping wells which might impair their effectiveness.

(3) The monitor wells are only screened in the aquifer to be monitored.

(4) The chosen casing material does not interfere with, or react to, the potential contaminants of major concern at the facility.

(5) The casing diameter allows an adequate amount of water to be removed during sampling and allows full development of the monitor well.

(6) The annular seal prevents pollutants from migrating down the monitor well.

(7) The methods of water sample collection require that the sample is collected after at least five well volumes have been removed from the well and that the samples are transported and handled in accordance with the United States Geological Survey's "National Handbook of Recommended Methods for Water-Data Acquisition," which provides guidelines for collection and analysis of

groundwater samples for selected unstable constituents. If the wells are low-yield wells, in that the wells are incapable of yielding three well volumes during a 24-hour period, the methods of water sample collection shall insure that a representative sample is obtained from the well.

(8) The hazardous waste constituents selected for analysis are specific to the facility, taking into account the chemical composition of hazardous wastes previously placed in the surface impoundment. The monitoring data shall be arranged in tabular form so that the date, the constituents, and the concentrations are readily discernible.

(9) The frequency of monitoring is sufficient to give timely warning of leachate so that remedial action can be taken prior to any adverse changes in the quality of the groundwater.

(10) A written statement from the qualified person preparing the report indicating whether any constituents have migrated into the vadose zone, surface water bodies, perched water, or water-bearing strata.

(11) A written statement from the qualified person preparing the report indicating whether any migration of leachate into the vadose zone, surface water bodies, perched water, or water-bearing strata is likely or not likely to occur within five years, and any evidence supporting that statement.

SEC. 3. Section 25208.17 of the Health and Safety Code is amended to read:

25208.17. (a) Except as provided in subdivision (g), a person specified in subdivision (h) is exempt from filing the report required by Section 25208.7 if the surface impoundment has been closed, or will be closed before January 1, 1988, in accordance with Subchapter 15 (commencing with Section 2510) of Chapter 3 of Title 23 of the California Administrative Code, and it has only been used for the discharge of economic poisons, as defined in Section 12753 of the Food and Agricultural Code, and if the person submits an application for exemption to the regional board on or before February 1, 1987, pursuant to subdivision (b) and an initial hydrogeological site assessment report to the regional board on or before July 1, 1987. A qualified person shall be responsible for the preparation of the hydrogeological site assessment report and shall certify its completeness and accuracy.

(b) A person seeking exemption from Section 25208.7 shall file an application for exemption with the regional board on or before February 1, 1987, together with an initial filing fee of three thousand dollars ($3,000). The application shall include the names of persons who own or operate each surface impoundment for which the exemption is sought and the location of each surface impoundment for which an exemption is sought.

(c) Notwithstanding Section 25208.3, each person filing an application for exemption pursuant to subdivision (b) shall pay only the application fee provided in subdivision (b) and any additional fees assessed by the state board to recover the actual costs incurred

by the state board and regional boards to administer this section. The person is not liable for fees assessed pursuant to Section 25208.3, except that, if the person is required to comply with Section 25208.7 or 25208.6, the fees assessed under this section shall include the costs of the regional board and state board to administer those sections.

(d) If a person fails to pay the initial filing fee by February 1, 1987, or fails to pay any subsequent additional assessment pursuant to subdivision (c), the person shall be liable for a penalty of not more than 100 percent of the fees due and unpaid, but in an amount sufficient to defer future noncompliance, as based upon that person's past history of noncompliance and ability to pay, and upon additional expenses incurred by the regional board and state board as a result of this noncompliance.

(e) Notwithstanding Section 25208.3, after the regional board has made a determination pursuant to subdivision (g), a final payment or refund of fees specified in subdivision (c) shall be made so that the total fees paid by the person shall be sufficient to cover the actual costs of the state board and the regional board in administering this section.

(f) The hydrogeological site assessment report shall contain for each surface impoundment, all of the following information:

(1) A description of the surface impoundment, including its physical characteristics, its age, the presence or absence of a liner, a description of the liner, the liner's compatibility with the hazardous wastes discharged to the impoundment, and the design specifications of the impoundment.

(2) A description of the volume and concentration of hazardous waste constituents placed in the surface impoundment, based on a representative chemical analysis of the specific hazardous waste type and accounting for variance in hazardous waste constituents over time.

(3) An analysis of surface and groundwater on, under, and within one mile of the surface impoundment to provide a reliable indication of whether or not hazardous constituents or leachate is leaking or has been released from the surface impoundment.

(4) A chemical characterization of soil-pore liquid in areas which are likely to be affected by hazardous constituents or leachate released from the surface impoundment, as compared to geologically similar areas near the surface impoundment which have not been affected by releases from the surface impoundment. This characterization shall include:

(A) A description of the composition of the vadose zone beneath the surface impoundment. This description shall include a chemical and hydrogeological characterization of both the consolidated and unconsolidated geologic materials underlying the surface impoundment, and an analysis for pollutants, including those constituents discharged into the surface impoundment. This description shall also include soil moisture readings from a representative number of points around the surface impoundment's

perimeter and at the maximum depth of the surface impoundment. If the regional board determines that the use of suction type soil sampling devices are infeasible due to climate, soil hydraulics, or soil texture, the regional board may authorize the use of alternative devices. The initial report shall contain all data in tabular form so that data, constituents, and concentrations are readily discernible.

(B) A determination of the chemical characteristics of the soil made by collecting a soil sample upgradient from the impoundment or from an area which has not been affected by seepage from the surface impoundment and which is in a hydrogeologic environment similar to the surface impoundment. The determinations shall be analyzed for the same pollutants analyzed pursuant to subparagraph (A).

(5) A description of current groundwater and vadose zone monitoring being conducted at the surface impoundment for leak detection, including detailed plans and equipment specifications and a technical report which provides the rationale for the spatial distribution of groundwater and vadose zone monitoring points for the design of monitoring facilities, and for the selection of monitoring equipment. This description shall include:

(A) A map showing the location of monitoring facilities with respect to each surface impoundment.

(B) Drawings and design data showing construction details of groundwater monitoring facilities, including all of the following:

(i) Casing and hole diameter.

(ii) Casing materials.

(iii) Depth of each monitoring well.

(iv) Size and position of perforations.

(v) Method for joining sections of casing.

(vi) Nature and gradation of filter material.

(vii) Depth and composition of annular seals.

(viii) Method and length of time of development.

(ix) Method of drilling.

(C) Specifications, drawings, and data for the location and installation of vadose zone monitoring equipment.

(D) Discussion of sampling frequency and methods and analytical protocols used.

(E) Justification of indicator parameters used.

(6) Documentation demonstrating that the monitoring system and methods used at the facility can detect any seepage before the hazardous waste constituents enter the waters of the state. This documentation shall include, but is not limited to, substantiation of each of the following:

(A) The monitoring facilities are located close enough to the surface impoundment to identify lateral and vertical migration of any constituents discharged to the impoundment.

(B) The groundwater monitoring wells are not located within the influence of any adjacent pumping water wells which might impair their effectiveness.

(C) The groundwater monitoring wells are screened only in the zone of groundwater to be monitored.

(D) The casing material in the groundwater monitoring wells does not interfere with, or react to, the potential contaminants of major concern at the impoundment.

(E) The casing diameter allows an adequate amount of water to be removed during sampling and allows full development of each well.

(F) The annular seal of each groundwater monitoring well prevents pollutants from migrating down the well.

(G) The water samples are collected after at least five well volumes have been removed from the well and that the samples are collected, preserved, transported, handled, analyzed, and reported in accordance with guidelines for collection and analysis of groundwater samples which provide for preservation of unstable indicator parameters and prevent physical or chemical changes which could interfere with detection of indicator parameters. If the wells are low-yield wells, in that the wells are incapable of yielding three well volumes during a 24-hour period, the methods of water sample collection shall insure that a representative sample is obtained from the well.

(H) The hazardous waste constituents selected for analysis are specific to the facility, taking into account the chemical composition of hazardous wastes previously placed in the surface impoundment.

(I) The frequency of monitoring is sufficient to give timely warning of any leakage or release of hazardous constituents or leachate so that remedial action can be taken prior to any adverse changes in the quality of the groundwater.

(7) A written statement from the qualified person preparing the report indicating whether any hazardous constituents or leachate has migrated into the vadose zone, water-bearing strata, or waters of the state in concentrations which pollute or threaten to pollute the waters of the state.

(8) A written statement from the qualified person preparing the report indicating whether any migration of hazardous constituents or leachate into the vadose zone, water-bearing strata, or waters of the state is likely or not likely to occur within five years, and any evidence supporting that statement.

(g) The regional board shall complete a thorough analysis of each hydrogeological site assessment report submitted pursuant to subdivision (b) within one year after submittal. If the regional board, determines that a hazardous waste constituent from the surface impoundment is polluting or threatening to pollute, as defined in subdivision (*l*) of Section 13050 of the Water Code, both of the following shall occur:

(1) The regional board shall issue a cease and desist order or a cleanup and abatement order which prohibits any discharge into the surface impoundment and which requires compliance with Section 25208.6.

(2) The person shall file a report pursuant to Section 25208.7 within nine months after the regional board makes the determination pursuant to subdivision (g). In making any determination under this subdivision, the regional board shall state the factual basis for the determinations.

(h) For purposes of this section, person means only the following:

(1) Pest control operators and businesses licensed pursuant to Section 11701 of the Food and Agricultural Code.

(2) Local governmental vector control agencies who have entered into a cooperative agreement with the department pursuant to Section 2426.

CHAPTER 749

An act to amend Section 69948 of, and to repeal and add Article 12.1 (commencing with Section 70110) of Chapter 5 of, Title 8 of the Government Code, relating to courts.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 69948 of the Government Code is amended to read:

69948. (a) The fee for reporting testimony and proceedings in contested cases is fifty-five dollars ($55) a day, or any fractional part thereof.

(b) In San Joaquin County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(c) In Madera County, the board of supervisors may, by ordinance or resolution, prescribe a higher rate of compensation for superior court reporters.

(d) In Kings County, the fee for reporting testimony and proceedings in contested cases is one hundred dollars ($100) a day, or any fractional part thereof.

(e) In Mariposa County, the fee for reporting testimony and proceedings in contested cases is ninety-five dollars ($95) a day, or any fractional part thereof.

(f) In Siskiyou County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(g) In Yuba County, the fee for reporting testimony and proceedings in contested cases is ninety dollars ($90) per day, or any fractional part thereof.

(h) In Butte County, pro tempore reporters shall receive a fee of seventy-five dollars ($75) a day, or any fractional part thereof, for

reporting testimony and proceedings in contested cases.

(i) In Sutter County, except as may otherwise be provided in Section 74839, the fee for reporting testimony and proceedings in contested cases is ninety dollars ($90) per day, or any fractional part thereof.

(j) In Napa County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(k) In Tehama County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(*l*) In Monterey County, the fee for reporting testimony and proceedings in contested cases in any court is seventy-five dollars ($75) a day or any fractional part thereof.

(m) In Nevada County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(n) In Calaveras County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof; provided that the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(o) In Placer County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(p) In Sierra County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(q) In Trinity County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(r) In Humboldt County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof.

(s) In Del Norte County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof.

(t) In Alpine County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(u) In Glenn County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(v) In Colusa County, the fee for reporting testimony and proceedings in contested cases is ninety dollars ($90) per day, or any fractional part thereof.

(w) In Shasta County, the board of supervisors may prescribe a higher rate of compensation for superior court reporters.

(x) In Solano County, the fee for reporting testimony and proceedings in contested cases is ninety dollars ($90) per day, or fifty-five dollars ($55) per half day or fractional part thereof; provided that the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(y) In Inyo County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(z) In Mono County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

SEC. 1.5. Article 12.1 (commencing with Section 70110) of Chapter 5 of Title 8 of the Government Code is repealed.

SEC. 2. Article 12.1 (commencing with Section 70110) is added to Chapter 5 of Title 8 of the Government Code, to read:

Article 12.1. Official Reporters in Tulare County

70110. In Tulare County, each judge of the superior court may appoint a competent phonographic reporter, to be known as a regular official reporter of that court, and such pro tempore reporters as necessary to report the proceedings of the court. Regular official reporters shall hold office during the pleasure of the appointing judge.

The duties of regular official reporters appointed pursuant to this section shall be performed as elsewhere provided by law, and shall include the reporting of every civil proceeding.

70111. (a) In consideration of all reporting services, official court reporters shall be paid biweekly at Range 184 of the current Tulare County salary schedule.

The initial rate for currently appointed official superior court court reporters on the effective date of this article shall be Range 184, step "E," two thousand five hundred eighty-four dollars and five cents ($2,584.05).

The initial hiring rate for each position shall be Range 184, step A. However, a judge of the superior court may appoint any such court reporter at a higher initial step if, in the opinion of the judge of the superior court, an individual to be appointed has such experience and qualifications to entitle that individual to the higher initial step.

The county shall provide each reporter stenographic machine paper, ink, and ribbons necessary for reporting.

(b) Where it is necessary to appoint a pro tempore reporter, the pro tempore reporter shall receive a per diem of one hundred fifteen dollars ($115) a day for the day the pro tempore reporter actually is on duty under order of the court.

Pro tempore reporters shall not receive more than one per diem fee a day from the county.

(c) This per diem rate shall also apply when a reporter is appointed pursuant to Section 869 of the Penal Code by a justice court judge acting as a magistrate.

(d) Each full-time official reporter and each official reporter pro tempore shall receive the salaries specified in subdivisions (a) and (b) respectively, unless the Board of Supervisors of Tulare County, by ordinance, provides for compensation in excess of the specified amounts, in which event the amount set by ordinance shall apply.

(e) For all transcripts incident to reporting services, each reporter shall receive the fees provided for in Section 69950.

70112. In addition to the compensation provided in this article,

each full-time reporter of the superior court shall be entitled to, and shall receive the same vacation, sick leave, salary step advancements, and similar privileges and benefits as are now or may hereafter be provided for the employees of the county.

Regular official reporters of the superior court shall participate in any group health, accident, life insurance, or deferred compensation plan adopted by the county.

70113. Official superior court court reporters shall be members of any retirement system maintained by the county. For retirement credit purposes compensation earnable shall be deemed to be the annual salary paid by the county to each official superior court court reporter.

70114. A reporter's filing fee of twenty dollars ($20) shall be paid in actions and proceedings, as specified in Section 68090.5, in the Tulare County Superior Court.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 750

An act to amend, repeal, and add Sections 14010 and 14046 of, and to add and repeal Sections 14029.9, 14029.91, 14029.92, 14029.95, 14029.96, 14083.5, and 14083.6 of, the Corporations Code, and to add Section 15327.1 to the Government Code, relating to economic and business development, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 14010 of the Corporations Code, as amended by Section 2 of Chapter 1195 of the Statutes of 1986, is amended to read:

14010. Unless the context otherwise requires, the definitions in this section govern the construction of this part.

(a) "Corporation" or "the corporation" means any nonprofit California small business development corporation created pursuant to this part.

(b) "Financial institution" means banking organizations including national banking associations and state-chartered commercial banks and trust companies; savings and loan associations; state insurance companies; mutual insurance companies; and other banking, loaning, retirement, and insurance organizations.

(c) "Economically disadvantaged area" means the area or areas within the region of a corporation consisting of those contiguous census tracts within urbanized areas as defined by the most recent federal decennial census, in which 20 percent or more of the families were reported by the most recent federal decennial census to have an annual income of less than the poverty level established by the Bureau of the Census, or comparable areas which because of technical factors, cannot be isolated by census tracts. The definition set forth in this subdivision shall be reviewed periodically and the board shall recommend necessary changes to the Legislature and the Governor.

(d) "Area of high youth unemployment and high youth delinquency" shall be defined by the board.

(e) "Region" means an area containing a population of not less than 500,000 and including within its boundaries one or more economically disadvantaged areas, and in which members of a corporation conduct normal business operations.

(f) (1) Unless otherwise defined by the board by regulation, "small business loan" means a loan to a business defined as an eligible small business as set forth in Section 121.3-10 of Part 121, Chapter 1, Title 13 of the Code of Federal Regulations, and including those businesses organized for agricultural purposes that will create or retain employment as a result of the loan.

(2) From time to time, the executive director, in consultation with the board shall provide guidelines as to the preferred ratio of jobs created or retained to total funds borrowed for guidance to the corporations.

(g) "Employment incentive loan" means a loan for the purpose of attracting new business to, or expanding an existing business, which over the period of the loan will result in the new or continued employment of at least 15 persons who are either persons residing in economically disadvantaged areas or youths residing in areas of high youth unemployment and high youth delinquency.

(h) "Member" means any organization, individual, financial institution, nonprofit organization or other business authorized to operate within this state which undertakes to make resources available to a corporation in accordance with this chapter.

(i) "Resources" means monetary contributions, donation of consultants, personnel, facilities, equipment, loan services, and other items or services as defined by the corporation.

(j) "Loan committee" means a committee appointed by the board of directors of a corporation to determine the course of action on every loan application pursuant to Article 7.5 (commencing with Section 14066).

(k) "Membership agreement" means an agreement between a corporation and any individual, financial institution, nonprofit organization, or other business under which agreement the individual, financial institution, nonprofit organization, or other business agrees to make available or contribute resources to the

corporation in accordance with Article 8 (commencing with Section 14075).

(*l*) "Board of directors" means the board of directors of the corporation.

(m) "OSB" means the Office of Small Business.

(n) "Board" means the Small Business Development Board.

(o) "Department" means the Department of Commerce.

(p) "Executive director" means the Executive Director of the Office of Small Business.

(q) "UDC" means an urban development corporation.

(r) "RDC" means a rural development corporation.

(s) "Director" means the Director of Commerce.

(t) "Financial aid" means the infusion of risk capital to small businesses for use in the development and exploitation of specific inventions and products.

(u) "Invention" means any new process or new technique without regard to whether a patent has or could be granted.

(v) "Product" means any product, device, technique, or process which is or may be exploitable commercially. That term shall not refer to pure research but shall be construed to apply to the products, devices, techniques, or processes which have advanced beyond the theoretic stage and are readily capable of being, or have been, reduced to practice.

(w) "Venture" means, without limitation, any contractual arrangement with any person whereby the corporation obtains rights from or in an invention or product or proceeds therefrom in exchange for granting of financial aid to that person.

This section shall become inoperative on July 1, 1989, and, as of January 1, 1990, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1990, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 14010 is added to the Corporations Code, to read:

14010. Unless the context otherwise requires, the definitions in this section govern the construction of this part.

(a) "Corporation" or "the corporation" means any nonprofit California small business development corporation created pursuant to this part.

(b) "Financial institution" means banking organizations including national banking associations and state-chartered commercial banks and trust companies; savings and loan associations; state insurance companies; mutual insurance companies; and other banking, loaning, retirement, and insurance organizations.

(c) "Economically disadvantaged area" means the area or areas within the region of a corporation consisting of those contiguous census tracts within urbanized areas as defined by the most recent federal decennial census, in which 20 percent or more of the families were reported by the most recent federal decennial census to have an annual income of less than the poverty level established by the Bureau of the Census, or comparable areas which because of

technical factors, cannot be isolated by census tracts. The definition set forth in this subdivision shall be reviewed periodically and the board shall recommend necessary changes to the Legislature and the Governor.

(d) "Area of high youth unemployment and high youth delinquency" shall be defined by the board.

(e) "Region" means an area containing a population of not less than 500,000 and including within its boundaries one or more economically disadvantaged areas, and in which members of a corporation conduct normal business operations.

(f) (1) Unless otherwise defined by the board by regulation, "small business loan" means a loan to a business defined as an eligible small business as set forth in Section 121.3-10 of Part 121 of Chapter 1 of Title 13 of the Code of Federal Regulations, and including those businesses organized for agricultural purposes that will create or retain employment as a result of the loan.

(2) From time to time, the executive director, in consultation with the board shall provide guidelines as to the preferred ratio of jobs created or retained to total funds borrowed for guidance to the corporations.

(g) "Employment incentive loan" means a loan for the purpose of attracting new business to, or expanding an existing business, which over the period of the loan will result in the new or continued employment of at least 15 persons who are either persons residing in economically disadvantaged areas or youths residing in areas of high youth unemployment and high youth delinquency.

(h) "Member" means any organization, individual, financial institution, nonprofit organization, or other business authorized to operate within this state which undertakes to make resources available to a corporation in accordance with this chapter.

(i) "Resources" means monetary contributions, donation of consultants, personnel, facilities, equipment, loan services, and other items or services as defined by the corporation.

(j) "Loan committee" means a committee appointed by the board of directors of a corporation to determine the course of action on every loan application pursuant to Article 7.5 (commencing with Section 14066).

(k) "Membership agreement" means an agreement between a corporation and any individual, financial institution, nonprofit organization, or other business under which agreement the individual, financial institution, nonprofit organization, or other business agrees to make available or contribute resources to the corporation in accordance with Article 8 (commencing with Section 14075).

(*l*) "Board of directors" means the board of directors of the corporation.

(m) "OSB" means the Office of Small Business.

(n) "Board" means the Small Business Development Board.

(o) "Department" means the Department of Commerce.

(p) "Executive director" means the Executive Director of the Office of Small Business.

(q) "UDC" means an urban development corporation.

(r) "RDC" means a rural development corporation.

(s) "Director" means the Director of Commerce.

This section shall become operative on July 1, 1989.

SEC. 3. Section 14029.9 is added to the Corporations Code, to read:

14029.9. The office, in its discretion and after the approval of the Small Business Development Board, may establish a program through which urban and rural small business development corporations may assist California small businesses by making available financial aid for the development phase of a definable product or process which is new to the business undertaking the development. Projects approved by a corporation shall be eligible for reimbursement on a regular basis up to 60 percent of allowable, documented expenses. Projects approved and the amount invested shall be based upon an analysis of the business plan submitted by the company. Evaluation criteria shall include product feasibility, company ability, marketing availability, job creation, and overall financial condition. Products need not be high technology but should be innovative.

In accordance with subdivision (h) of Section 14023.5, the executive director may appoint a technology marketing advisory committee to review product development applications being considered for funding by UDCs and RDCs. The advisory committee shall include, among others, a product development specialist, a marketing specialist, and a venture capitalist.

This section shall become inoperative on July 1, 1989, and, as of January 1, 1990, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1990, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 14029.91 is added to the Corporations Code, to read:

14029.91. In accordance with subdivision (a) of Section 14023.5, the executive director may provide technical assistance and staff support for the technology marketing advisory committee created pursuant to Section 14029.9 and to the UDCs and RDCs implementing that section.

This section shall become inoperative on July 1, 1989, and, as of January 1, 1990, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1990, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 14029.92 is added to the Corporations Code, to read:

14029.92. The office may propose and the board may adopt regulations and investment guidelines including a definition of allowable expenses for the product development program established by Section 14029.9.

This section shall become inoperative on July 1, 1989, and, as of January 1, 1990, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1990, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 14029.95 is added to the Corporations Code, to read:

14029.95. If the office establishes the program authorized by Section 14029.9, return on investments authorized by Section 14029.9 for the corporations shall be derived from a royalty based on the sale of the product developed. The royalty shall not exceed 5 percent of the new product sales unless approval is granted by the Executive Director of the Office of Small Business Development after notification of the Small Business Development Board of Directors. The royalty payment shall continue until a specified multiple of the corporation's investment has been returned within a specified period of time. After the required multiple has been reached, the royalty rate may be reduced and continued for a fixed time period.

This section shall become inoperative on July 1, 1989, and, as of January 1, 1990, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1990, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 14029.96 is added to the Corporations Code, to read:

14029.96. If the office establishes the program authorized by Section 14029.9, the corporations shall charge an application fee for assistance for product development of up to 1.5 percent of the amount requested or a minimal fee of one hundred dollars ($100).

This section shall become inoperative on July 1, 1989, and, as of January 1, 1990, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1990, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. Section 14046 of the Corporations Code, as amended by Section 14 of Chapter 875 of the Statutes of 1979, is amended to read:

14046. (a) Except as provided in subdivision (d) of Section 14131, Section 14083, and Section 14083.5, the purpose of a regional small business development corporation loan guarantee fund shall be to guarantee loans, approved by the regional corporation, which meet the California Small Business Development Corporation Law loan criteria established by the board, policies of the corporation, and provisions of Article 7.5 (commencing with Section 14066) of this chapter. The state shall not be liable or obligated in any way as a result of the allocation of state money to a regional small business development corporation loan guarantee fund beyond the state money which is allocated and deposited in the fund pursuant to this chapter, and which is not otherwise withdrawn by the state pursuant to this chapter.

(b) A summary of all loans to which a state guarantee is attached shall be submitted to the executive director upon completion of the loan agreement.

This section shall become inoperative on July 1, 1989, and, as of January 1, 1990, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1990, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 9. Section 14046 is added to the Corporations Code, to read:

14046. (a) Except as provided in subdivision (d) of Section 14131, and Section 14083, the purpose of a regional small business development corporation loan guarantee fund shall be to guarantee loans, approved by the regional corporation, which meet the California Small Business Development Corporation Law loan criteria established by the board, policies of the corporation, and provisions of Article 7.5 (commencing with Section 14066) of this chapter. The state shall not be liable or obligated in any way as a result of the allocation of state money to a regional small business development corporation loan guarantee fund beyond the state money which is allocated and deposited in the fund pursuant to this chapter, and which is not otherwise withdrawn by the state pursuant to this chapter.

(b) A summary of all loans to which a state guarantee is attached shall be submitted to the executive director upon completion of the loan agreement.

(c) This section shall become operative on July 1, 1989.

SEC. 10. Section 14083.5 is added to the Corporations Code, to read:

14083.5. If the office establishes the program authorized by Section 14029.9, the corporations are authorized to use up to one-tenth of the amount within their regional small business development corporation loan guarantee fund to make investments in California small businesses for product development as specified in Sections 14029.9 and 14029.95. The investments in each business shall not exceed the amount of the current loan guarantee limits established by regulation.

This section shall become inoperative on July 1, 1989, and, as of January 1, 1990, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1990, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 11. Section 14083.6 is added to the Corporations Code, to read:

14083.6. If the office establishes the program authorized by Section 14029.9, revenues derived from royalties on product investments shall be returned to the investing corporation's regional small business development corporation loan fund.

This section shall become inoperative on July 1, 1989, and, as of January 1, 1990, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1990, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 12. Section 15327.1 is added to the Government Code, to read:

15327.1. (a) All or a portion of the funds in the California

Economic Development Grant and Loan Fund may be paid out, with the approval of the Department of Finance, to lending institutions eligible under Sections 16521 and 16611 to receive state deposits. Funds paid out to those institutions shall be expended solely for the purposes of the Economic Development Grant and Loan Fund. Those payments shall be made by the Treasurer on warrants drawn by the Controller and requisitioned by, and at the request of, the department or pursuant to a grant or contract conditions. These conditions apply retroactively to all federal, state, and local money, including interest received by, and allocated by, the department since 1984.

(b) No outside bank accounts shall be established pursuant to subdivision (a) without the prior approval of the Director of Finance. The director may, at any time, withdraw that approval.

(c) The state has a residual interest in the revenues from the investment and any principal of the funds deposited or transferred to eligible lending institutions pursuant to this section. Any accrued interest from those investments shall be considered as part of the Economic Development Grant and Loan Fund and shall be expended for the purposes of the fund.

The state is not liable or obligated in any way beyond the state money which was paid out or transferred to eligible institutions pursuant to this section.

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 for the Department of Commerce to carry out its contractual obligations with the Department of Transportation to provide a construction bond guarantee program for the Interstate 105 freeway construction in fulfillment of a court decree and in order to reenact provisions relating to the Small Business Product Development Act, it is necessary that this act go into immediate effect.

CHAPTER 751

An act to amend Section 11044 of the Government Code, relating to the Attorney General, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 11044 of the Government Code is amended to read:

11044. (a) The State Board of Control shall determine and may at any time redetermine which funds, other than the General Fund, shall be charged with the costs of all legal services rendered by the Attorney General or his or her deputies or assistants to the function supported by any such fund. The costs shall be fixed and determined by the Attorney General and shall be a charge against any fund or special account in the General Fund so designated by the board.

(b) Upon the request of the Attorney General in the form prescribed by the Controller, the Controller shall transfer the amount of the charges for services rendered from the agency's appropriation to the appropriation for the support of the Attorney General's office, provided that the Attorney General shall not request an amount which, when added to previous charges in the same fiscal year, exceeds the amount budgeted by the state agency for Attorney General legal services. Reimbursements for these charges shall be credited to and in augmentation of the appropriation for the support of the Attorney General's office from which the cost of the services was or will be paid.

(c) A state agency that has a dispute regarding charges for legal services provided by the Attorney General shall notify the Attorney General, in writing, of the dispute and the basis therefor. The Attorney General shall immediately provide a credit to the state agency in the subsequent billing or billings for the amount of the charges in dispute. No further transfer of funds shall occur with respect to the services for which charges are disputed until the dispute is resolved by the Attorney General, subject to the approval of the Department of Finance.

(d) For purposes of this section, a special account or fund in the General Fund shall not be considered the General Fund.

SEC. 2. This act shall become operative on July 1, 1987.

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 California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the funding device established by this act to become operational at the beginning of the 1987–88 fiscal year, and so facilitate the orderly administration of governmental finance, it is necessary for this act to take effect immediately.

CHAPTER 752

An act to amend Sections 8422, 8423, 8424, and 8427 of, and to add Section 8426 to, the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 8422 of the Education Code is amended to read:

8422. The purpose of the child care and employment fund shall be to provide child care services for the children of parents in the service delivery area's job training and placement programs established pursuant to the federal Job Training Partnership Act (Public Law 97-300) who are not participants in the program pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code. To the extent that funding is available, children referred by private industry councils shall be provided the child care necessary to permit their parents to participate in program activities under the federal Job Training Partnership Act, notwithstanding the eligibility and need criteria established by subdivision (a) of Section 8263, or the admission priorities established by subdivision (b) of Section 8263.

The State Department of Education shall, in consultation with the Employment Development Department, coordinate technical assistance and training for the local private industry council board and staff members on how to effectively incorporate quality childcare services for California parents in the local training and placement programs pursuant to the federal Job Training Partnership Act.

SEC. 2. Section 8423 of the Education Code is amended to read:

8423. Funding for each local service delivery area's child care and employment fund shall include, but not be limited to, all of the following:

(a) Social services funds appropriated to the State Department of Social Services for that purpose. These funds shall be available to the extent that they are (1) designated by the Legislature for child care, and (2) transferred to the State Department of Education pursuant to an interagency agreement for distribution to each local child care and employment fund.

(b) Funds designated for child care by the private industry council, established pursuant to Section 15030 of the Unemployment Insurance Code, but not less than 50 percent of the cost of care for every recipient of job training or placement services funded using the area's federal Job Training Partnership Act (Public Law 97-300) appropriation, whose job readiness assessment includes the need for

child care. The private industry council may refer, for information, all participants who need or use child care to the agency administering the child care and employment fund. The private industry council shall provide funds only for those participants whose child care needs are not met by other community resources. The private industry council and the child care and employment fund agency shall negotiate the local contract for child care. In negotiating the terms of the contract, the private industry council and the child care and employment fund agency shall consider relevant factors which shall include, but not be limited to, the number of parents to be served and the cost of care available in the local child care market.

SEC. 3. Section 8424 of the Education Code is amended to read:

8424. (a) The Superintendent of Public Instruction shall identify child development agencies to administer the child care and employment fund. The identification process and final selection of one child development agency shall include consultation with and approval of the private industry council and local elected officials.

(b) The superintendent shall identify a child development agency within the service delivery area operating a program at the time of the identification that meets the criteria of subdivisions (a) to (i), inclusive, of Section 8425. Selection of the agency shall take into account past performance at delivering child care arrangements for parents, fiscal accountability, and ability to coordinate services with the private industry council.

(c) If the superintendent determines that no child development agency within the service delivery area meets the criteria of Section 8425, then other agencies operating within the service delivery area may apply.

(d) If the superintendent determines that more than one child development agency within the service delivery area meet the criteria of Section 8425, the superintendent in consultation with the private industry council and local elected officials may identify a consortium of these agencies to administer the child care and development fund.

(e) The superintendent shall allow child development agencies selected to administer child care development funds pursuant to this article to continue in that function for as long as that arrangement is mutually agreeable to the Superintendent of Public Instruction and the local private industry council.

(f) The Superintendent of Public Instruction shall develop a formula for equitable disbursement of funds pursuant to this article.

If the superintendent determines that funds allocated pursuant to this article for a service delivery area are not being fully utilized within that area, funds which have not been encumbered by contract may be reallocated for Job Training Partnership Act child care services pursuant to this article for any service delivery area, and allocations in subsequent years may be adjusted accordingly.

SEC. 4. Section 8426 is added to the Education Code, to read:

8426. The State Department of Education shall reimburse the

contracting child care and employment fund agencies 50 percent of their net allowable costs for programs which provide child care services under this article.

SEC. 5. Section 8427 of the Education Code is amended to read:

8427. At least 75 percent of the net allowable costs by the local administering child care agency shall be expended on payments for direct child care services. Administrative costs shall not exceed 15 percent of the net allowable costs, and the total expended between administrative and support service costs shall not exceed 25 percent. All services shall conform to state licensing requirements.

The child care agency shall negotiate service levels with each referral source and shall accept eligible referrals from each referral source. The agency shall provide each parent with the following services:

(a) Education and counseling services on how to choose child care.

(b) Education and counseling services on payment through a vendor/voucher system for child care selected in the community by the parent.

(c) Child care services with a provider of the parent's choosing. Payment shall be equal to the fee charged to full-cost families in the program.

(d) Transition services for continuation of child care arrangements in the posttraining period.

SEC. 6. This act shall be deemed operative for the entire 1987–88 fiscal year as though it were enacted and become operative on July 1, 1987. The Superintendent of Public Instruction and other public officers shall, for such purposes, have authority to take all necessary steps to effectuate the retroactive application of this act, including the authority to adjust allowance computations, appointments, and disbursements for the fiscal year commencing July 1, 1987.

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 protect the health and safety of children requiring day care while their parents, Job Training Partnership Act recipients, are in job training and placement programs; to facilitate the orderly implementation of the Job Training Partnership Act and the Child Care and Employment Act Fund; and to provide funding for the operation of the program in the 1987–88 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 753

An act to amend Sections 70.5, 94.5, 290, and 457.1 of the Penal Code, relating to crimes.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 70.5 of the Penal Code is amended to read:

70.5. Every commissioner of civil marriages or every deputy commissioner of civil marriages who accepts any money or other thing of value for performing any marriage pursuant to Section 4205.1 of the Civil Code, including any money or thing of value voluntarily tendered by the persons about to be married or who have been married by the commissioner of civil marriages or deputy commissioner of civil marriages, other than a fee expressly imposed by law for performance of a marriage, whether the acceptance occurs before or after performance of the marriage and whether or not performance of the marriage is conditioned on the giving of such money or the thing of value by the persons being married, is guilty of a misdemeanor.

It is not a necessary element of the offense described by this section that the acceptance of the money or other thing of value be committed with intent to commit extortion or with other criminal intent.

This section does not apply to the request or acceptance by any retired commissioner of civil marriages of a fee for the performance of a marriage.

The provisions of this section are inapplicable to the acceptance of a fee for the performance of a marriage on Saturday, Sunday, or a legal holiday.

SEC. 2. Section 94.5 of the Penal Code is amended to read:

94.5. Every judge, justice, commissioner, or assistant commissioner of a court of this state who accepts any money or other thing of value for performing any marriage, including any money or thing of value voluntarily tendered by the persons about to be married or who have been married by such judge, justice, commissioner, or assistant commissioner, whether the acceptance occurs before or after performance of the marriage and whether or not performance of the marriage is conditioned on the giving of such money or the thing of value by the persons being married, is guilty of a misdemeanor.

It is not a necessary element of the offense described by this section that the acceptance of the money or other thing of value be committed with intent to commit extortion or with other criminal intent.

This section does not apply to the request for or acceptance of a

fee expressly imposed by law for performance of a marriage or to the request or acceptance by any retired judge, retired justice, or retired commissioner of a fee for the performance of a marriage. For the purposes of this section, a retired judge or retired justice sitting on assignment in court shall not be deemed to be a retired judge or retired justice.

This section does not apply to an acceptance of a fee for performing a marriage on Saturday, Sunday, or a legal holiday.

SEC. 3. Section 290 of the Penal Code is amended to read:

290. (a) Any person who, since July 1, 1944, has been or is hereafter convicted in this state of the offense of assault with intent to commit rape or sodomy under Section 220, or of any offense defined in subdivisions (1), (2), (3), (4), and (6) of Section 261, or of any offense defined in Section 264.1, 266, 267, 285, 286, 288, 288a, 289, or 647a, subdivision (d) of Section 647, or subdivision 1 or 2 of Section 314, or of any offense involving lewd and lascivious conduct under Section 272; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; or any person who since that date or at any time hereafter is discharged or paroled from a penal institution where he or she was confined because of the commission or attempt to commit one of the above-mentioned offenses; or any person who since that date or at any time hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code; or any person who has been since that date or is hereafter convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall, within 30 days after the effective date of this section or within 14 days of coming into any county or city, or city and county in which he or she temporarily resides or is domiciled for that length of time register with the chief of police of the city in which he or she is domiciled or the sheriff of the county if he or she is domiciled in an unincorporated area.

(b) Any person who, after August 1, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where he or she was confined because of the commission or attempt to commit one of the above-mentioned offenses or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital and the official shall require the person to read and sign such form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge,

parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement or hospital shall give one copy of the form to the person, and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction which makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency which prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy. All such forms shall, if the conviction which makes the person subject to this section is a felony conviction, be transmitted within such times as to be received by the local law enforcement agency and prosecuting agency 30 days prior to the discharge, parole, or release of the person.

(c) Any person who, after August 1, 1950, is convicted in this state of the commission or attempt to commit any of the above-mentioned offenses and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted and the court shall require the person to read and sign such form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, and shall send one copy to the Department of Justice, and shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the following offenses shall be subject to registration under the procedures of this section: assault with intent to commit rape, sodomy, or oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220; or any offense defined in Section 288, paragraph (1) of subdivision (b) or subdivision (c) or (d) of Section 286, paragraph (1) of subdivision (b) or subdivision (c) or (d) of Section 288a, subdivision (2) of Section 261, or subdivision (a) of Section 289; or any offense under Section 264.1 involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

(2) Prior to discharge or parole from the Youth Authority, all persons subject to registration shall be informed of the duty to register under the procedures set forth in this section. Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(3) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25.

(4) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person required to register attains the age of 25 or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code, whichever event occurs first. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case which are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) The registration shall consist of (a) a statement in writing signed by the person, giving such information as may be required by the Department of Justice, and (b) the fingerprints and photograph of the person. Within three days thereafter, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the Department of Justice.

(f) If any person required to register pursuant to this section changes his or her residence address, the person shall inform, in writing within 10 days, the law enforcement agency with whom he or she last registered of the new address. The law enforcement agency shall, within three days after receipt of this information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence.

(g) Any person required to register under this section who violates any of its provisions is guilty of a misdemeanor. Any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy, or of any violation of Section 261, 264.1, 286, 288, 288a, or 289, and who is required to register under this section who willfully violates any of the provisions of this section is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in the county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in the county jail and of completing probation of at least one year.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the Board of Prison Terms, the Youth Authority, or

the court, as the case may be, shall order the parole or probation of the person revoked.

(i) The statements, photographs, and fingerprints herein required shall not be open to inspection by the public or by any person other than a regularly employed peace or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including fire fighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This provision does not apply to any person temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) Every person who, prior to January 1, 1985, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (f) if the person did register within 30 days.

SEC. 4. Section 457.1 of the Penal Code is amended to read:

457.1. (a) As used in this section, "arson" means a violation of Section 451 or 453.

(b) Upon a conviction of the offense of arson or attempted arson, the court may impose, in addition to any other penalty prescribed by law, a requirement that the person shall, within 30 days, register with the chief of police of the city in which he or she resides, or the sheriff of the county if he or she resides in an unincorporated area, and shall register within 30 days of coming into any county or city in which he or she expects to reside or is temporarily domiciled for at least 30 days. The court shall not require the person to register unless it finds that the person in committing the offense exhibited compulsive behavior, and unless it states on the record the reasons for its findings.

(c) Any person required to register pursuant to this section who is discharged or paroled from a jail, prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of arson shall, prior to the discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of

confinement. The official shall require the person to read and sign such form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The official in charge of the place of confinement shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement shall give one copy of the form to the person, and shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency which prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy. All forms shall be transmitted within such times as to be received by the local law enforcement agency and prosecuting agency 30 days prior to the discharge, parole, or release of the person.

(d) Any person who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine shall, prior to the release or discharge, be informed of his or her duty to register under this section by the court in which he or she has been convicted, and the court shall require the person to read and sign such form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon his or her release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, and shall send two copies to the Department of Justice, which, in turn, shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(e) The registration shall consist of (1) a statement in writing signed by the person, giving the information as may be required by the Department of Justice, and (2) the fingerprints and photograph of the person. Within three days thereafter, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the Department of Justice.

(f) If any person required to register by this section changes his or her residence address, he or she shall inform, in writing within 10 days, the law enforcement agency with whom he or she last registered of his or her new address. The law enforcement agency shall, within three days after receipt of the information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence.

(g) In the case of a person convicted for the first time of arson, the person shall be required to comply with the requirements of this section only for a period of five years after the discharge from prison,

release from jail, or termination of probation or parole of the person convicted.

(h) Any person required to register under the provisions of this section who violates any of the provisions thereof is guilty of a misdemeanor. Any person who has been convicted of arson or attempted arson and who is required to register under the provisions of this section who willfully violates any of the provisions thereof is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in the county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in the county jail and of completing probation of at least one year.

(i) Whenever any person is released on parole or probation and is required to register under the provisions of this section but fails to do so within the time prescribed, the Board of Prison Terms, the Youth Authority, or the court, as the case may be, shall order the parole or probation of that person revoked.

(j) The statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace or other law enforcement officer.

(k) In any case in which a person who would be required to register pursuant to this section is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county, including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where that assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This provision shall not apply to any person temporarily released under guard from the institution where he or she is confined.

(*l*) Nothing in this section shall be construed to conflict with the provisions of Section 1203.4 concerning termination of probation and release from penalties and disabilities of probation.

A person required to register under this section may initiate a proceeding under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, and upon obtaining a certificate of rehabilitation, shall be relieved of any further duty to register under this section. This certificate shall not relieve the petitioner of the duty to register under this section for any offense subject to this section of which he or she is convicted in the future.

CHAPTER 754

An act to amend Sections 66780.5 and 66796.41 of, and to repeal and add Section 66780.2 of, the Government Code, relating to solid waste.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 66780.2 of the Government Code is repealed.

SEC. 2. Section 66780.2 is added to the Government Code, to read:

66780.2. (a) With each revision of a county solid waste management plan occurring on or after January 1, 1988, the plan shall indicate the remaining combined capacity of existing solid waste facilities, in cubic yards and years, to accept solid waste generated in the county. If the county determines that the remaining combined capacity of an existing solid waste facility will be exhausted within eight years, then, except as provided in paragraphs (1) and (2) and notwithstanding any other provision of law, the revision of the plan shall reserve an area or areas for the location of a new solid waste facility or the expansion of an existing solid waste facility.

(1) If the county determines that there is no area available for the location of a new solid waste facility or the expansion of an existing facility which is consistent with the applicable city or county general plan pursuant to subdivision (b), the county is not required to reserve that area in the revision of the plan, but the revision of the plan shall instead include a specific program for the handling and disposal of solid waste generated in the county in excess of its remaining solid waste facility capacity, subject to approval by the board.

(2) If a county reserved a site expansion or a potential site for a solid waste facility in its solid waste management plan prior to January 1, 1988, that site reservation may be deemed an area reservation for the purposes of compliance with this subdivision and subdivision (b).

(b) A county shall reserve an area or areas for the location of a new solid waste facility or the expansion of an existing facility in its solid waste management plan which is consistent with the applicable city or county general plan. An area is consistent with the general plan if all of 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) The area reserved for a new solid waste facility or the expansion of an existing solid waste facility is located in or coextensive with a land use area designated or authorized for solid

waste facilities in the applicable city or county general plan.

(3) The land uses authorized in the applicable city or county general plan adjacent to or near the area reserved for the establishment or expansion are compatible with the establishment or expansion of a solid waste facility.

(c) A county may tentatively reserve an area or areas for the location of a new solid waste facility or the expansion of an existing facility in its solid waste management plan even though that reservation of an area or areas is not consistent with the applicable city or county general plan. A reserved area in a solid waste management plan is tentative until it is made consistent with the applicable city or county general plan. If a county has tentatively identified a site expansion or a potential site for a solid waste facility in its solid waste management plan, that tentative site identification may be deemed a tentative area reservation for the purposes of subdivisions (d) and (e).

(d) An area tentatively reserved for the establishment or expansion of a solid waste facility shall be removed from the county solid waste management plan for either of the following reasons:

(1) A city or county fails or has failed to make the finding that the area is consistent with the general plan or has made a finding that the area should not be used for the location of a solid waste facility.

(2) The board refuses to concur in the issuance of a solid waste facility permit for the site because of the city's or county's failure to make the finding that the area in which the site is located is consistent with the general plan.

(e) The removal of a tentatively reserved area from the county solid waste management plan, pursuant to subdivision (d), shall be accomplished by either of the following methods:

(1) The county shall remove the area at the time of the next revision of the plan.

(2) The local agency having jurisdiction over the area shall request the county to remove the designation at the time of the next revision of the plan.

(f) For purposes of this section and Sections 66796.32, 66796.34, 66796.41, and 66796.42, the term "city" or "county" means the city or county in which the solid waste facility, or the area reserved for a new solid waste facility or the expansion of an existing facility, is located.

(g) Notwithstanding Section 66720.1, for purposes of this section, "solid waste facility" does not include facilities for the conversion of waste to energy, except that a county solid waste management plan may identify areas for these facilities.

SEC. 3. Section 66780.5 of the Government Code is amended to read:

66780.5. In addition to the other requirements of this title, the county solid waste management plan prepared pursuant to Section 66780 shall:

(a) Include in the first revision as required in Section 66780.7 an

amendment delineating an enforcement program in accordance with Chapter 3 (commencing with Section 66795), which has been reviewed by the board and the State Department of Health Services.

(b) Identify a program for the safe management of hazardous wastes, as defined in Section 25117 of the Health and Safety Code, which are generated by households and which should be separated from the solid waste stream, to the extent that the county determines a need for this program.

(c) Be reviewed, and revised, if appropriate, at least every three years and revised where necessary to be consistent with state policy. A report of the results of the plan review shall be submitted to the board and to the department beginning on the third anniversary of the date of board approval of the plan submitted pursuant to Section 66780 with subsequent reviews and reports at least every three years thereafter.

(d) Any amendment to the plan shall be approved by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county. Each proposed amendment shall be submitted to each city within the county. Each city shall act upon the proposed amendment within 90 days after the city has received the amendment. If a city fails to act upon the proposed amendment within 90 days after receiving the amendment, the city shall be deemed to have approved the amendment as submitted. Each amendment shall be submitted to the board for approval as to its compliance with state policy.

(e) At the next revision of the plan occurring on or after January 1, 1987, the plan shall be revised to indicate the amount of asbestos waste generated in the county from asbestos removal projects and the sites or potential sites which have been designated to accept that waste. If it is concluded that the quantities of asbestos waste are not significant or that there are no sites located within the area covered by the county solid waste management plan where the asbestos waste could feasibly be disposed of, then the plan need not designate sites or potential sites for accepting such waste. If the plan does not designate sites or potential sites for accepting asbestos waste, then it shall identify measures which the county intends to take to secure the availability of sites for that purpose.

(f) In addition to the requirements of Section 66780.2, at the next revision of a solid waste management plan occurring on or after January 1, 1988, the plan shall be revised to include a plan by the county which establishes a goal of recycling 20 percent of the solid waste generated in the county, and actions the county will take to achieve this goal.

SEC. 4. Section 66796.41 of the Government Code is amended to read:

66796.41. (a) Except as provided in Section 66796.42, 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 new or expanded solid waste facility shall be found to be consistent with the general plan if both of the following requirements are met:

(1) The site is located in a land use area designated or authorized for solid waste facilities in the applicable city or county general plan. 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 located in an area designated or authorized for solid waste facilities 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 limits the authority of a city or county to amend its general plan.

(f) For purposes of this chapter, a new solid waste facility is one which has never had, or does not currently have, a solid waste facilities permit.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 755

An act to add Section 739.3 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. (a) The Legislature finds and declares as follows:

(a) Many rural communities and small metropolitan areas of the state are served by small independent telephone companies.

(b) The spiraling costs of telephone service furnished by these small independent telephone companies may put telephone service beyond the budgets of many rural subscribers.

(c) Although the Public Utilities Commission has been shifting the costs of local telephone service from the long-distance telephone companies to the local companies, effective long-distance competition has not yet been fully realized by telephone subscribers in rural communities.

(d) It is, therefore, the intent of the Legislature, in enacting Section 739.3 of the Public Utilities Code, to require the commission to establish a rate structure for small independent telephone companies serving rural and small metropolitan areas which does not impose rates greater than 50 percent more than the average rates paid by residential subscribers in urban areas, as determined by the commission.

SEC. 2. Section 739.3 is added to the Public Utilities Code, to read:

739.3. (a) The commission shall develop and implement a suitable program to establish a fair and equitable local rate structure aided by transfer payments to small independent telephone corporations serving rural and small metropolitan areas. The purpose of the program shall be to promote the goals of universal telephone service and to reduce any disparity in the rates charged by those companies.

(b) For purposes of this section, small independent telephone corporations means those independent telephone corporations serving rural areas, as determined by the commission.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 756

An act to amend Section 1052 of, and to add Sections 1055, 1055.1, 1055.2, and 1055.3 to, the Water Code, relating to water.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 1052 of the Water Code is amended to read:

1052. (a) The diversion or use of water subject to this division other than as authorized in this division is a trespass.

(b) Civil liability may be administratively imposed by the board pursuant to Section 1055 for a trespass as defined in this section in an amount not to exceed five hundred dollars ($500) for each day in which the trespass occurs. Administrative civil liability may be imposed only during years declared to be critical by the Department of Water Resources.

(c) The Attorney General, upon request of the board, shall institute in the superior court in and for any county wherein the diversion or use is threatened, is occurring, or has occurred appropriate action for the issuance of injunctive relief as may be warranted by way of temporary restraining order, preliminary injunction, or permanent injunction.

(d) Any person or entity committing a trespass as defined in this section may be liable for a sum not to exceed five hundred dollars ($500) for each day in which the trespass occurs. The Attorney General, upon request of the board, shall petition the superior court to impose, assess, and recover any sums pursuant to this subdivision. In determining the appropriate amount, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(e) All funds recovered pursuant to this section shall be transferred to the General Fund of the state.

(f) The remedies prescribed in this section are cumulative and not alternative.

SEC. 2. Section 1055 is added to the Water Code, to read:

1055. (a) The executive director of the board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to subdivision (a) of Section 1052. The complaint shall allege the act or failure to act that constitutes a trespass, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail, and shall inform the party so served that a hearing shall be

conducted within 60 days after the party has been served. The hearing shall be before a member of the board as it may specify. The person who has been issued a complaint may waive the right to a hearing, in which case the board shall not conduct a hearing.

(c) After any hearing, the member shall report a proposed decision and order to the board and shall supply a copy to the party served with the complaint, the board's executive director, and any other person requesting a copy. The member of the board acting as hearing officer may sit as a member of the board in deciding the matter. The board, after making an independent review of the record and taking such additional evidence as may be necessary and could not reasonably have been offered before the hearing officer, may adopt, with or without revision, the proposed decision and order.

(d) Orders setting administrative civil liability shall become effective and final upon issuance thereof and payment shall be made.

SEC. 3. Section 1055.1 is added to the Water Code, to read:

1055.1. Any party aggrieved by a final order issued by the board under Section 1055 may obtain review of the order of the board in the superior court by filing in the court a petition for writ of mandate within 30 days following the issuance of the order by the board. If no aggrieved party petitions for writ of mandate within the time provided by this section, the order of the board shall not be subject to review by any court.

SEC. 4. Section 1055.2 is added to the Water Code, to read:

1055.2. No person shall be subject to both civil liability imposed under Section 1055 and civil liability imposed by the superior court under subdivision (d) of Section 1052 for the same act or failure to act.

SEC. 5. Section 1055.3 is added to the Water Code, to read:

1055.3. In determining the amount of civil liability, the board shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

CHAPTER 757

An act to add Chapter 13.5 (commencing with Section 25988) to Division 20 of the Health and Safety Code, relating to equine animals.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Chapter 13.5 (commencing with Section 25988) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 13.5. HORSES AND OTHER EQUINE ANIMALS

25988. A peace officer, officer of a humane society as qualified under Section 607f or 607g of the Civil Code, or officer of an animal control or animal regulation department of a public agency, as qualified under Section 830.9 of the Penal Code, may issue a citation as prescribed in Section 25988.5, to any person or entity keeping horses or other equine animals for hire, if the person or entity fails to meet any of the following standards of humane treatment regarding the keeping of horses or other equine animals:

(a) Any enclosure where an equine is primarily kept shall be of sufficient size to enable the equine to comfortably stand up, turn around, and lie down, and shall be kept free of excessive urine and waste matter.

(b) Paddocks and corrals shall be of adequate size for the equine to move about freely.

(c) Buildings, premises, and conveyances used in conjunction with equines shall be kept free of sharp objects, protrusions, or other materials that are likely to cause injury.

(d) Equines shall be supplied with nutritionally adequate feed and clean water, in accordance with standards published by the Cooperative Extension of the Division of Agricultural Sciences of the University of California.

(e) Tack and equipment shall be appropriate and fit properly.

(f) After use the equine shall be cooled out to a normal condition at rest.

(g) When not being ridden, a saddled equine shall have available adequate shelter from the elements, and have loosened saddle straps and girths.

(h) An equine shall not be available for hire or use if the equine has any conditions that violate subdivision (b) of Section 597 or Section 597f of the Penal Code or any of the following conditions:

(1) Sores or abrasions caused or likely to be irritated by the surfaces of saddles, girths, harnesses, or bridles.

(2) Blindness in both eyes.

(3) Improperly or inadequately trimmed and shod feet contrary

to the standards published by the Cooperative Extension of the Division of Agricultural Sciences of the University of California.

(i) Each equine shall be individually identified, using humane methods, such as a detailed description, including, but not limited to, name, breed, color, markings, size, age, sex, and photograph.

(j) Farrier and veterinary receipts shall be kept and shall identify each equine treated.

(k) Veterinary, farrier, and feed records shall be made available during normal business hours to the law enforcement officer. Upon failure to provide these records, the equine or equines in question may not be used for hire until such time as the records are produced or an equine veterinarian shall certify that the equine or equines are fit for labor.

25988.5. Citations issued pursuant to Section 25988 shall require the person cited to pay a civil penalty in the amount of one hundred dollars ($100) for each violation, and one hundred dollars ($100) for each day the violation continues. Funds collected from the payment of penalties pursuant to this chapter shall be deposited with the entity under which jurisdiction the officers who issue the citations operate, and these funds may be expended by the entity only for administrative and enforcement costs incurred pursuant to this chapter.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 2 of Title 2 of the Government Code.

CHAPTER 758

An act to amend Section 546 of the Code of Civil Procedure, relating to court orders.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 546 of the Code of Civil Procedure is amended to read:

546. (a) The court may issue ex parte 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), 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. In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be dissolved, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted. The court may on motion of the plaintiff or on its own motion shorten the time for service on the defendant of the order to show cause.

The court may issue an ex parte order pursuant to this subdivision, excluding one party from a residence or dwelling only when the affidavit in support of an application for the order affirmatively shows facts sufficient for the court to ascertain that the plaintiff has a right under color of law to possession of the premises.

(b) The presiding judge of the superior court in each county shall designate not less than one judge, commissioner, or referee to be reasonably available to orally issue, by telephone or otherwise, emergency protective orders at all times when the superior court is not in session. A judge, commissioner, or referee so designated may issue an ex parte emergency protective order when a police or sheriff's officer asserts reasonable grounds to believe that a person is in immediate and present danger of domestic violence by a family or household member, based upon the person's allegation of a recent incident of abuse or threat of abuse by that family or household member. The order may consist of any of the orders set forth in paragraphs (2), (3), and (6) of subdivision (a) of Section 4359 of the Civil Code, as well as an order determining the temporary care and control of any minor children of the endangered person and the person against whom the order is sought. The order shall be issued without prejudice to any party.

A judge, commissioner, or referee may issue an emergency protective order pursuant to this subdivision only upon a finding that reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists and that an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence. The police or sheriff's officer requesting the order shall reduce it to writing, and shall sign the order. The order shall include all of the following:

(1) A statement of the grounds asserted for the order.

(2) The date and time the order expires.

(3) The address of the superior court for the district or county in which the endangered person resides.

(4) The following statement: "To the Protected Party: This order will last only until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court, at the address noted above, when it opens. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that he or she may assist you in making your

application. To the Restrained Party: This order will last until the date noted above. The protected party may, however, obtain a more permanent restraining order when the court opens. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that he or she may assist you in responding to the application."

The Judicial Council shall prescribe the form of the order and any other documents required by this subdivision. The statement required in paragraph (4) shall be printed in English and Spanish.

The officer who requested the emergency protective order, while on duty, shall carry copies of the order.

The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to the protected party. A copy also shall be filed with the court as soon as practicable after issuance.

An emergency protective order shall expire not later than the close of judicial business on the next day of judicial business following the day of it's issue.

The availability of an emergency protective order shall not be affected by the fact that the endangered person has vacated the household to avoid abuse.

A police or sheriff's officer shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A police or sheriff's officer acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 3. This act shall become operative on July 1, 1988.

CHAPTER 759

An act to amend Sections 26003 and 26013 of the Public Resources Code, and to amend Section 2821 of the Public Utilities Code, relating to electricity.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. The Legislature finds and declares that observance of contract terms relating to the control, appropriation, use, and distribution of water is a matter of overriding state and local interest and concern, particularly because of the need to use water for irrigation and municipal purposes. The Legislature further finds and declares that continued adherence to the federal policies contained in Section 210 of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617; 92 Stat. 3117, 3144), relating to cogeneration and small power production, is in the public interest.

It is therefore the intent of the Legislature, in enacting the amendments to Section 2821 of the Public Utilities Code contained in this act, to further those federal policies.

SEC. 2. Section 26003 of the Public Resources Code is amended to read:

26003. As used in this division, unless the context otherwise requires:

(a) "Authority" means the California Alternative Energy Source Financing Authority established pursuant to Section 26004 and any board, commission, department, or officer succeeding to the functions thereof, or to whom the powers conferred upon the authority by this division shall be given.

(b) "Cost" as applied to a project or portion thereof financed under this division means all or any part of the cost of construction and acquisition of all lands, structures, real or personal property or an interest therein, rights, rights-of-way, franchises, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which those buildings or structures may be moved; the cost of all machinery, equipment, and furnishings, financing charges, interest prior to, during, and for a period after, completion of construction as determined by the authority; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of architectural, engineering, financial, accounting, auditing and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction, acquisition,

or financing of any project.

(c) "Participating party" means any person, company, corporation, partnership, firm, or other entity or group of entities engaged in operations within this state which requires financing pursuant to the terms of this division to aid and assist in the promotion of alternative energy sources in the state.

(d) "Alternative sources" means the application of cogeneration technology, as defined in Section 25134; the conservation of energy; or the use of solar, biomass, wind, geothermal, hydroelectricity under 30 megawatts, or any other source of energy, the efficient use of which will reduce the use of fossil and nuclear fuels. "Alternative sources" does not include any hydroelectric facility that does not meet state laws pertaining to the control, appropriation, use, and distribution of water, including, but not limited to, the obtaining of applicable licenses and permits.

(e) "Project" means any land, building, improvement thereto, rehabilitation, work, property, or structure, real or personal, including, but not limited to, machinery and equipment, whether or not in existence or under construction, utilizing or designed to utilize an alternative source.

(f) "Revenue" means all rents, receipts, purchase payments, loan repayments, and all other income or receipts derived by the authority from the sale, lease, or other disposition of alternative source facilities, or the making of loans to finance alternative source facilities, and any income or revenue derived from the investment of any money in any fund or account of the authority.

(g) "Public agency" means any federal or state agency, board, or commission, or any county, city and county, city, regional agency, public district, or other political subdivision.

SEC. 3. Section 26013 of the Public Resources Code is amended to read:

26013. (a) All projects shall be constructed or completed subject to the rules and regulations of the authority.

(b) In addition to the requirements of subdivision (a), all projects involving construction or completion of hydroelectric facilities shall comply with all state laws pertaining to the control, appropriation, use, and distribution of water, including, but not limited to, the obtaining of applicable licenses and permits, as a condition of receiving any financing under this division. For these purposes, no financial assistance shall be provided by the authority for construction or completion of hydroelectric facilities unless the participating party provides proof of either of the following:

(1) Certification from the State Water Resources Control Board that a water right permit has been issued for the operation of the hydroelectric facility. No certification shall be issued unless, in applying for the certification, the applicant agrees in writing to comply with all terms and conditions of the permit.

(2) Certification from the State Water Resources Control Board that, in the opinion of the board, the private energy producer

possesses riparian rights or other water rights which authorize the operation of the hydroelectric facility.

(c) The authority may acquire, by deed, purchase, lease, contract, gift, devise, or otherwise, any real or personal property, structures, rights, rights-of-way, franchises, easements, and other interests in lands located within this state necessary or convenient for the construction or operation of a project, upon terms and conditions it deems advisable, and to lease, sell, or dispose of any property or interest in any manner necessary or desirable to carry out this division. The authority may not exercise the power of eminent domain under this division or any other provision of law.

SEC. 4. Section 2821 of the Public Utilities Code is amended to read:

2821. (a) The commission shall approve and establish equitable charges to be paid by an electrical corporation which purchases electricity or electrical generating capacity, or both, from any private energy producer employing other than a conventional power source for the generation of electricity.

(b) The commission, on its own motion or on application of an electrical corporation or a private energy producer, may also specify the prices, terms, and conditions for the purchase or sale of electricity or electrical generating capacity, or both, between an electrical corporation and a private energy producer, and these prices, terms, and conditions, so specified, shall be considered reasonable and prudent for all purposes. The commission may act to specify these prices, terms, and conditions on its own motion or on application of an electrical corporation or a private energy producer.

(c) Every contract, whether executed on or after January 1, 1988, or prior to that date, for the purchase of electricity or electrical generating capacity, or both, by an electrical corporation from a private energy producer employing hydroelectric facilities shall require proof of compliance by the private energy producer with all state laws relating to the control, appropriation, use, and distribution of water, including, but not limited to, the obtaining of applicable licenses and permits. For these purposes, the electrical corporation shall require the private energy producer to provide proof of either of the following:

(1) Certification from the State Water Resources Control Board that a water right permit has been issued for the operation of the hydroelectric facility. No certification shall be issued unless, in applying for the certification, the applicant agrees in writing to comply with all terms and conditions of the permit.

(2) Certification from the State Water Resources Control Board that, in the opinion of the board, the private energy producer possesses riparian rights or other water rights which authorize the operation of the hydroelectric facility.

The requirements of this subdivision shall apply only to contracts involving hydroelectric projects which have not commenced commercial operation prior to May 18, 1987.

(d) For purposes of meeting the requirements of subdivision (c) or providing certification required under Section 26013 of the Public Resources Code, the private energy producer shall furnish information as is reasonably required by the State Water Resources Control Board to document a claim of right. Every private energy producer requesting certification from the board pursuant to subdivision (c) or Section 26013 of the Public Resources Code shall pay to the board at the time of filing a certification fee of two hundred fifty dollars ($250) to cover the reasonable cost of the board in evaluating and processing the certification request.

(e) Every contract in violation of subdivision (c) is void and unenforceable on and after whichever of the following dates applies:

(1) February 29, 1988, for contracts involving hydroelectric projects which commence commercial operation on or after May 18, 1987, and prior to January 1, 1988.

(2) The 60th day after commencement of commercial operation for contracts involving hydroelectric projects which commence commercial operation on or after January 1, 1988.

The commission shall disallow, for purposes of establishing rates for an electrical corporation, all amounts expended for the purchase of electricity pursuant to a contract which is void and unenforceable under this subdivision.

CHAPTER 760

An act to amend Section 1845 of the Water Code, relating to water.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 1845 of the Water Code is amended to read:

1845. (a) Upon failure of any person to comply with any valid, final cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, shall petition the superior court for the issuance of such prohibitory or mandatory injunctive relief as may be warranted by way of temporary restraining order, preliminary injunction, or permanent injunction.

(b) Any person or entity who violates a valid, final cease and desist order issued pursuant to this chapter may be liable for a sum not to exceed one thousand dollars ($1,000) for each day in which such violation occurs.

(c) The Attorney General, upon request of the board, shall petition the superior court to impose, assess, and recover such sums. In determining the appropriate amount, the court shall take into consideration all relevant circumstances, including but not limited

to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(d) The evidence before the court shall consist of the record before the board and any evidence of a cease and desist order violation. The court may permit the introduction of additional evidence upon a showing of good cause. The court shall determine good cause by considering whether the evidence could have been produced, with reasonable diligence, at the prior administrative hearing or whether the evidence was improperly excluded. In every case, the court shall exercise its independent judgment on the evidence.

(e) All funds recovered pursuant to this section shall be transferred to the General Fund of the state.

CHAPTER 761

An act to amend Section 12028 of the Penal Code, and add Section 5008.6 to the Public Resources Code, relating to dangerous devices and apparatus.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 12028 of the Penal Code is amended to read:

12028. (a) The unlawful concealed carrying upon the person or within the vehicle of the carrier of any of the weapons mentioned in Section 653k, 12020, or 12025 is a nuisance.

(b) A firearm of any nature used in the commission of any misdemeanor as provided in this code or any felony, or an attempt to commit any misdemeanor as provided in this code or any felony, is, upon a conviction of the defendant, or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, a nuisance. A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.

(c) Any weapon described in subdivision (a), or, upon conviction of the defendant or a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, any weapon described in subdivision (b), shall be surrendered to the sheriff of a county or the chief of police or other head of a municipal police department of any city or city and county. The officers to whom the weapons are surrendered, except upon the certificate of

a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, may annually, between the 1st and 10th days of July, in each year, offer the weapons, which the officers in charge of them consider to have value with respect to sporting, recreational, or collection purposes, for sale at public auction to persons licensed under federal law to engage in businesses involving any weapon purchased. If any weapon has been stolen and is thereafter recovered from the thief or his or her transferee, or is used in such a manner as to constitute a nuisance pursuant to subdivision (a) or (b) without the prior knowledge of its lawful owner that it would be so used, it shall not be so offered for sale but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon his or her identification of the weapon and proof of ownership.

(d) If, under this section, a weapon is not of the type that can be sold to the public, generally, or is not sold pursuant to subdivision (c) the weapon shall in the month of July, next succeeding, or sooner, if necessary to conserve local resources including space and utilization of personnel who maintain files and security of those weapons, be destroyed so that it can no longer be used as such weapon except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of it is necessary or proper to the ends of justice.

(e) This section does not apply to any firearm in the possession of the Department of Fish and Game or which was used in the violation of any provision of the Fish and Game Code, or any regulation adopted pursuant thereto, or which is forfeited pursuant to Section 5008.6 of the Public Resources Code.

(f) No stolen weapon shall be sold or destroyed pursuant to subdivision (c) or (d) unless reasonable notice is given to its lawful owner, if his or her identity and address can be reasonably ascertained.

SEC. 2. Section 12028 of the Penal Code is amended to read:

12028. (a) The unlawful concealed carrying upon the person or within the vehicle of the carrier of any explosive substance, other than fixed ammunition, dirk, or dagger, as provided in Section 12020, the unlawful concealed carrying upon the person or within the vehicle of the carrier of the weapons mentioned in Section 12025, and the unlawful possession or carrying of any item in violation of Section 653k, is a nuisance.

(b) A firearm of any nature used in the commission of any misdemeanor as provided in this code or any felony, or an attempt to commit any misdemeanor as provided in this code or any felony, is, upon a conviction of the defendant, or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, a nuisance. A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.

(c) Any weapon described in subdivision (a), or, upon conviction of the defendant or a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, any weapon described in subdivision (b), shall be surrendered to the sheriff of a county or the chief of police or other head of a municipal police department of any city or city and county. The officers to whom the weapons are surrendered, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, may annually, between the 1st and 10th days of July, in each year, offer the weapons, which the officers in charge of them consider to have value with respect to sporting, recreational, or collection purposes, for sale at public auction to persons licensed under federal law to engage in businesses involving any weapon purchased. If any weapon has been stolen and is thereafter recovered from the thief or his or her transferee, or is used in such a manner as to constitute a nuisance pursuant to subdivision (a) or (b) without the prior knowledge of its lawful owner that it would be so used, it shall not be so offered for sale but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon his or her identification of the weapon and proof of ownership.

(d) If, under this section, a weapon is not of the type that can be sold to the public, generally, or is not sold pursuant to subdivision (c) the weapon shall in the month of July, next succeeding, or sooner, if necessary to conserve local resources including space and utilization of personnel who maintain files and security of those weapons, be destroyed so that it can no longer be used as such weapon except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of it is necessary or proper to the ends of justice.

(e) This section does not apply to any firearm in the possession of the Department of Fish and Game or which was used in the violation of any provision of the Fish and Game Code, or any regulation adopted pursuant thereto, or which is forfeited pursuant to Section 5008.6 of the Public Resources Code.

(f) No stolen weapon shall be sold or destroyed pursuant to subdivision (c) or (d) unless reasonable notice is given to its lawful owner, if his or her identity and address can be reasonably ascertained.

SEC. 3. Section 5008.6 is added to the Public Resources Code, to read:

5008.6. Notwithstanding any other provision of law, the judge before whom any person is tried for a violation of any provision of this code within the jurisdiction of the department, or regulation adopted pursuant thereto, may, upon the conviction of the accused, order the forfeiture of any device or apparatus which is designed to and capable of injuring or killing any person or animal or capturing any animal and which was used in committing the offense charged.

The department shall either sell or destroy any device or apparatus so forfeited. The proceeds from all sales shall be paid into the State Parks and Recreation Fund, segregated with the money deposited pursuant to Section 5008.4, and available only for the purposes of Section 5008.4. For purposes of this section, forfeiture of bail is a conviction.

SEC. 4. Section 2 of this bill incorporates amendments to Section 12028 of the Penal Code proposed by both this bill and SB 1301. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 12028 of the Penal Code, and (3) this bill is enacted after SB 1301, in which case Section 1 of this bill shall not become operative.

CHAPTER 762

An act to add Section 95.1 to the Penal Code, relating to crimes.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 95.1 is added to the Penal Code, to read:

95.1. Every person who threatens a juror with respect to a criminal proceeding in which a verdict has been rendered and who has the intent and apparent ability to carry out the threat so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, is guilty of a misdemeanor.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 763

An act to amend Sections 33059 and 33523 of, and to add Section 33741.5 to, the Financial Code, relating to financial institutions.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 33059 of the Financial Code is amended to read:

33059. (a) "Payment instrument" means:

(1) Any instrument (whether or not negotiable) for the transmission or payment of money which is designated on its face by the term "money order" or by any substantially similar term; or

(2) Any check, draft, or other instrument (whether or not negotiable) for the transmission or payment of money, if payable on demand.

(b) Notwithstanding the provisions of paragraph (2) of subdivision (a), "payment instrument" does not include the following:

(1) Any travelers check.

(2) Any credit card voucher.

(3) Any letter of credit.

(4) Any instrument which is redeemable by the issuer in goods or services.

SEC. 2. Section 33523 of the Financial Code is amended to read:

33523. No licensee or California agent of a licensee shall, nor shall any licensee cause or permit any of its agents to, sell any payment instrument issued by the licensee without concurrently receiving or, in the case of a sale to an insured bank, an insured savings and loan association, or an insured credit union, by the next business day after the sale, in consideration of such sale any of the following or any combination of the following in an aggregate amount not less than the face amount of such payment instrument:

(a) Cash or its equivalent.

(b) Payment instrument, check, or draft believed to be collectible.

(c) Credit card voucher believed to be collectible.

SEC. 3. Section 33741.5 is added to the Financial Code, to read:

33741.5. For purposes of subdivision (a) of Section 33742, in case a payment instrument issued by a licensee is sold by a California agent of the licensee to an insured bank, an insured savings and loan association, or an insured credit union, the sale shall be deemed to occur on the next business day after the sale.

CHAPTER 764

An act to add Section 7737.7 to, and to amend Sections 10145 and 17538.3 of, the Business and Professions Code, to amend Section 1717.5 of, and to add Section 1916.2 to, the Civil Code, to amend Section 7490 of the Government Code, and to amend Section 591.3 of the Probate Code, relating to financial institutions.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 7737.7 is added to the Business and Professions Code, to read:

7737.7. A trustee may deposit the corpus of the trust in any credit union which is insured by the National Credit Union Share Insurance Fund.

SEC. 2. Section 10145 of the Business and Professions Code is amended to read:

10145. (a) A real estate broker who accepts funds belonging to others in connection with any transaction subject to this part shall deposit all such funds which are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

(b) A real estate broker acting as a principal pursuant to Section 10131.1 or Article 6 (commencing with Section 10237) of this part shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.

(c) A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed, shall immediately deliver the funds to the broker or, if so directed by the broker, shall place the funds into the hands of the broker's principal, into a neutral escrow depository, or shall deposit the funds into the broker's trust fund account.

(d) If not otherwise expressly prohibited by a provision of this part, a real estate broker may, at the request of the owner of trust funds or of the principals to a transaction or series of transactions from whom the broker has received trust funds, deposit the funds into an interest-bearing account in a bank, or savings and loan association, or credit union, if all of the following requirements are met:

(1) The account is in the name of the broker as trustee for the specified beneficiary or specified principal of a transaction or series of transactions.

(2) All of the funds in the account are covered by insurance provided by an agency of the federal government.

(3) The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust.

(4) The broker discloses to the person from whom the trust funds are received and to any beneficiary whose identity is known to the broker at the time of establishing the account the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.

(5) No interest earned on funds in the account shall inure directly or indirectly to the benefit of the broker nor to any person licensed to the broker.

(6) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract shall have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.

(e) The broker shall have no obligation to place trust funds into an interest-bearing account unless requested to do so and unless all of the conditions in subdivision (d) are met; nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account.

(f) Nothing in subdivision (d) shall preclude the commissioner from prescribing by regulation circumstances in which and conditions under which a real estate broker is authorized to deposit funds received in trust into an interest-bearing trust fund account.

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of any such trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

(i) As used in this section "neutral escrow" means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by any person described in subdivision (a) of Section 17006 and subdivision (c) of Section 17006 of said code.

SEC. 3. Section 17538.3 of the Business and Professions Code is amended to read:

17538.3. The provisions of Section 17538 do not apply to any of the following:

(a) To instances in which all advertising for goods or services contains a notice as to each item or service offered, which, in the case of printed advertising, shall be in a type size at least as large as that *indicating* the price, that a delay may be expected of a specified period. In such cases, one of the events described in Section 17538 must occur no later than the expiration of the period specified in the advertisement.

(b) To goods or services, such as quarterly magazines, which by their nature are not ready for use or consumption until a future date and for that reason cannot be stocked at the time of order.

(c) To installments other than the first of goods, such as magazine subscriptions, ordered for serial delivery.

(d) To any telecommunications goods and services sold by a telecommunications company, except those telecommunications goods and services purchased for use primarily for personal, family, or household purposes.

(e) To financial services offered in the ordinary course of business by a supervised bank, national banking association, bank holding company, a state or federal savings and loan association, a state or federal credit union, or a subsidiary or affiliate thereof.

(f) To any delay in delivery of goods or services caused by the United States Post Office, an act of God, or a labor strike by the vendor's employees.

SEC. 4. Section 1717.5 of the Civil Code is amended to read:

1717.5. Except as otherwise provided by law or where waived by the parties to an agreement, in any action on a contract based on a book account, as defined in Section 337a of the Code of Civil Procedure, entered into on or after January 1, 1987, which does not provide for attorney's fees and costs as provided in Section 1717, the party who is determined to be the party prevailing on the contract shall be entitled to reasonable attorney's fees in addition to other costs.

Reasonable attorney's fees awarded pursuant to this section shall be fixed by the court in an amount that shall not exceed the lesser of five hundred dollars ($500) or 25 percent of the principal obligation owing under the contract. If a party is found to have no obligation owing on a book account, the court shall award that party reasonable attorney's fees not to exceed five hundred dollars ($500). These attorney's fees shall be an element of the costs of the suit.

If there is a written agreement between the parties signed by the person to be charged, the fees provided by this section shall not be imposed unless that agreement contains a statement that the prevailing party in any action between the parties is entitled to the fees provided by this section.

This section does not apply to any action in which an insurance company is a party, nor shall an insurance company, surety, or guarantor be liable under this section, in the absence of a specific contractual provision, for the attorney's fees and costs awarded a prevailing party against its insured.

This section does not apply to any action in which a bank, a bank holding company, a subsidiary of a bank or holding company, a savings association, federal association, a subsidiary of an association or a holding company of an association, or a state or federal credit union or a subsidiary or an affiliate of a state or federal credit union, is a party.

SEC. 5. Section 1916.2 is added to the Civil Code, to read:

1916.2. The restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution do not apply to any loans made by, or forbearances of, a public retirement or pension system that is created, authorized, and regulated by the laws of a state other than California, or the laws of a local agency of a state other than California.

This section establishes as an exempt class of persons pursuant to Section 1 of Article XV of the California Constitution, any public retirement or pension system that is created, authorized, and regulated by the laws of a state other than California, or the laws of a local agency of a state other than California.

SEC. 6. Section 7490 of the Government Code is amended to read:

7490. Except as provided in Sections 6069, 10145, 10146, and 17766.5 of the Business and Professions Code, Sections 25134, 25241, 29535, and 31111 of the Corporations Code, Sections 12300.3, 14250, 14251, 14252, 14253, 14254, 14255, 14406, 14653, 17409, 18612, 18945, 18986, 22406, and 24406 of the Financial Code, Section 12586 of the Government Code, Sections 1351.1, 1352 and 1357 of the Health and Safety Code, Sections 904 and 1703 of the Insurance Code, Section 1092 of the Unemployment Insurance Code, and Section 11703.4 of the Vehicle Code, no waiver by a customer of any right or procedure hereunder shall be valid, whether oral or written, and whether with or without consideration.

SEC. 7. Section 591.3 of the Probate Code is amended to read:

591.3. (a) Except as provided in subdivisions (c) and (d):

(1) Prior to the consummation of any of the actions described in subdivision (b) without court supervision, the executor or administrator to whom authority has been granted to act without court supervision shall advise the persons affected by the proposed action of his or her intention to take such action.

(2) The advice, known and referred to in this article as "advice of proposed action," shall be given to the devisees and legatees whose interest in the estate is affected by the proposed action; to the heirs of the decedent in intestate estates; to the State of California if any portion of the estate is to escheat to it; and to persons who have filed a request for special notice pursuant to Section 1202.

(b) The actions requiring such advice are all of the following:

(1) Selling or exchanging real property.

(2) Granting options to purchase real property.

(3) Selling or exchanging personal property, except for securities sold upon an established stock or bond exchange and other assets

referred to in Sections 770 and 771.5 when sold for cash.

(4) Leasing real property for a term in excess of one year.

(5) Entering into any contract, other than a lease of real property, not to be performed within two years.

(6) Continuing for a period of more than six months from the date of appointment of the executor or administrator of an unincorporated business or venture in which the decedent was engaged or which was wholly or partly owned by the decedent at the time of his or her death, or the sale or incorporation of such business.

(7) The first payment, the first payment for a period commencing 12 months after the death of the decedent, and any increase in the payments, of a family allowance.

(8) Investing funds of the estate, except depositing funds in banks and investing in federally insured savings and loan association and credit union accounts, in units of a common trust fund described in Section 585.1, in direct obligations of the United States maturing not later than one year from the date of investment or reinvestment, and in mutual funds which are comprised of (A) those obligations, or (B) repurchase agreements with respect to any obligation, regardless of maturity, in which the fund is authorized to invest.

(9) Completing a contract entered into by the decedent to convey real or personal property.

(10) Borrowing money or executing a mortgage or deed of trust or giving other security.

(11) Determining third-party claims to real and personal property if the decedent died in possession of, or holding title to, such property, or determining decedent's claim to real or personal property title to or possession of which is held by another.

(c) The advice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The advice of proposed action need not be given to any person who, in writing, waives his or her right to the advice of proposed action with respect to the particular proposed action. The waiver may be executed at any time before or after the proposed action is taken. The waiver shall describe the particular proposed action and may waive particular aspects of the advice, such as the service, mailing, or time requirements of Section 591.4, or the giving of the advice in its entirety for the particular proposed action.

CHAPTER 765

An act to amend Sections 18080.5, 18114, 18116, 18116.1, and 18118 of, and to add Section 18116.2 to, the Health and Safety Code, relating to housing, and making an appropriation therefor.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 18080.5 of the Health and Safety Code is amended to read:

18080.5. (a) A numbered report of sale, lease, or rental form issued by the department shall be submitted each time the following transactions occur by or through a dealer:

(1) Whenever a manufactured home or mobilehome is sold.

(2) Whenever a manufactured home or mobilehome not previously registered in this state is rented, leased, leased with an option to buy, sold, or transferred.

(3) Whenever a commercial coach is rented, leased, leased with an option to buy, sold, or transferred.

(b) The numbered report of sale, lease, or rental forms shall be used and distributed in accordance with the following terms and conditions:

(1) A copy of the form shall be delivered to the purchaser.

(2) All fees and penalties due for the transaction that were required to be reported with the report of sale, lease, or rental form shall be paid to the department within 10 calendar days from the date they became due, as defined by subdivision (e). Penalties due for noncompliance with this paragraph shall be paid by the dealer. The dealer shall not charge the consumer for those penalties.

(3) Notice of the registration or transfer of a manufactured home, mobilehome, or commercial coach shall be reported pursuant to subdivision (d).

(4) The original report of sale, lease, or rental form, together with all required documents to report the transaction or make application to register or transfer a manufactured home, mobilehome, or commercial coach, shall be forwarded to the department. Any application shall be submitted within 10 calendar days from the date the transaction was required to be reported, as defined by subdivision (e).

(c) A manufactured home, mobilehome, or commercial coach displaying a copy of the report of sale, lease, or rental may be occupied without registration decals or registration card until the registration decals and registration card are received by the purchaser.

(d) In addition to the other requirements of this section, every dealer upon transferring by sale, lease, or otherwise any

manufactured home or mobilehome shall, not later than the 10th calendar day thereafter, not counting the date of sale, give written notice of the transfer to the assessor of the county where the manufactured home or mobilehome is to be installed. The written notice shall be upon forms provided by the department containing any information that the department may require, after consultation with the assessors. Filing of a copy of the notice with the assessor in accordance with this section shall be in lieu of filing a change of ownership statement pursuant to Sections 480 and 482 of the Revenue and Taxation Code.

(e) For purposes of this section, a transaction by or through a dealer shall be deemed completed and consummated and any fees and the required report of sale, lease, or rental is due when any of the following occurs:

(1) The purchaser of any commercial coach has signed a purchase contract or security agreement, or the lessee of a new commercial coach has signed a lease agreement or lease with option to buy, or, has paid any purchase price, and has taken physical possession or delivery of the commercial coach.

(2) For sales subject to Section 18035, when all the amounts other than escrow fees and amounts for uninstalled or undelivered accessories are disbursed from the escrow account.

(3) For sales subject to Section 18035.2, when the installation has been completed and a certificate of occupancy has been issued.

SEC. 2. Section 18114 of the Health and Safety Code is amended to read:

18114. (a) A registration fee of eleven dollars ($11) shall be due and payable to the department at the time of original registration or renewal of registration for each transportable section of a manufactured home, mobilehome, or commercial coach that is subject to annual renewal.

(b) For a manufactured home, mobilehome, or truck camper that is not subject to annual renewal, the registration fee of eleven dollars ($11) shall be due for each transportable section at the time of original registration and upon application for each subsequent change, addition, or deletion of registered owners, legal owners, or junior lienholders and shall be in addition to any other fees that may be required by the application.

(c) A registration fee of thirty dollars ($30) shall be charged for each original application for registration of a floating home and for each subsequent application to record a change, addition, or deletion of registered owners, legal owners, or junior lienholders of a floating home. This fee shall be in addition to any other fees that may be required by the application.

(d) A registration fee required by subdivision (a) for annual renewal of registration is delinquent if not paid on or before the expiration date of the previous registration year. A registration fee required by either subdivision (b) or subdivision (c) for applications other than annual renewal of registration is delinquent if not paid

within 20 days after the date it became due. A penalty of three dollars ($3) shall be added for each registration fee that is delinquent. No penalty is due if the application and required registration fees were placed in the United States mail before midnight on the day before the fee became delinquent, as evidenced by post mark or affidavit by the applicant.

SEC. 3. Section 18116 of the Health and Safety Code is amended to read:

18116. (a) A license fee is due and payable to the department as of the original date of sale, rental, or lease of a new commercial coach and is due and payable each year thereafter for renewal of registration, on or before midnight of the expiration date assigned by the department and noted on the registration card for all manufactured homes, mobilehomes, and commercial coaches which are not subject to local property taxation or otherwise exempt.

(b) License fees due for original registration of a new commercial coach are delinquent if not deposited with the department within 10 days of the original date of sale, rental, or lease. License fees due for renewal of registration for a manufactured home, mobilehome, or commercial coach are delinquent if not paid on or before midnight of the expiration date assigned by the department and noted on the registration card that was last issued. A penalty equal to 20 percent of the license fee due shall be added to any license fee due if it is allowed to become delinquent for a period of from 1 through 119 days. No penalty is due if the application and required license fees were placed in the United States mail before midnight on the day before the fees became delinquent, as evidenced by postmark or affidavit by the applicant.

(c) An added penalty of fifty dollars ($50) per transportable section shall be collected along with any other license fee and penalty due if the license fee for renewal of registration for a manufactured home or mobilehome is allowed to become delinquent for 120 days or more.

(d) An added penalty of two hundred dollars ($200) for each commercial coach shall be added to any license fee and penalty due if the license fee due for an original registration or for each subsequent renewal of registration is allowed to become delinquent for 120 days or more.

(e) It is the intent of the Legislature that license fees levied on manufactured homes, mobilehomes, or commercial coaches subject to this part shall not be altered or increased from the rates and levels of license fees established prior to January 1, 1981.

SEC. 4. Section 18116.1 of the Health and Safety Code is amended to read:

18116.1. (a) Nonpayment of the fees and penalties provided for in Sections 18114, 18114.1, and 18115, and in subdivisions (a), (b), (c), and (d) of Section 18116 that are due on a mobilehome, manufactured home, commercial coach, truck camper, or floating home shall constitute a lien in favor of the State of California in the

amount owing.

(b) Notwithstanding any other provision of law, the lien provided for in subdivision (a) shall include all fees and penalties due and unpaid beginning with the fees for original registration that became delinquent for 120 days or more and continue to accrue to include all fees and penalties that subsequently become due and remain unpaid.

(c) Until the amount of a lien provided for in subdivision (a) or (b) is paid to the department, the department shall not do either of the following:

(1) Amend the permanent title record of the manufactured home or mobilehome which is the subject of the lien for the purpose of transferring any ownership interest or transferring or creating any security interest in the manufactured home or mobilehome.

(2) Issue any duplicate, substitute, or new certificate of title, registration card, or copy of a registration card with respect to the manufactured home or mobilehome which is the subject of the lien.

SEC. 5. Section 18116.2 is added to the Health and Safety Code, to read:

18116.2. (a) If the lien in favor of the State of California in the amount owing as provided by Section 18116.1 is against a commercial coach, and that lien has not been satisfied for a period of one year from the date the commercial coach became subject to the lien, the department may collect the amount of the lien on the commercial coach plus costs not to exceed four hundred fifty dollars ($450) by appropriate civil action or by seizure and sale of the commercial coach and its contents on which the lien has been placed or by seizure and sale of any other commercial coach owned by the owner of the commercial coach on which the lien has been placed.

(b) At least 10 days before the seizure, notice of the lien and of the intent to seize and sell the commercial coach and its contents shall be given by the department to the registered owner and legal owners, and any other persons known to be claiming an interest in the commercial coach or its contents, by registered mail addressed to those persons at the last known address appearing on the department's records.

(c) Any person receiving the notice of the lien and the intent to seize and sell the commercial coach and its contents may request a hearing to contest the existence or the amount of the lien. If no hearing is requested, the commercial coach and its contents shall be seized and sold.

(d) If a hearing is requested, a 10-day notice shall be given of the time and place of the hearing, which shall be held within the county of residence of the person requesting the hearing or of the registered owner. The hearing shall be conducted by a referee, who shall submit findings and recommendations to the director of the department or the director's authorized representative, who shall decide the matter. The decision shall be effective on notice thereof to the interested parties.

(e) At any time before seizure or sale, any registered owner, legal owner or person claiming an interest in the commercial coach or its contents may pay the department the amount of the lien, plus costs. In that event, the seizure and sale shall not be held and the commercial coach and its contents, if seized, shall be returned by the department to the person entitled to its possession. This payment shall not constitute a waiver of the right to a hearing.

(f) When the department or an authorized agent has reasonable cause to believe that the lien may be jeopardized within the 10-day notice of intent period, the commercial coach and its contents may be seized without prior notice to the registered owner or legal owner, upon obtaining authorization for the seizure from the director of the department or the director's authorized representative. In those cases, a notice of the lien and the intent to sell the commercial coach and its contents shall be given by the department to the registered and legal owners and anyone known to be claiming an interest in the commercial coach or its contents, within 48 hours after seizure, excluding Saturdays, Sundays and the holidays specified in Section 6700 of the Government Code. Any hearing to contest the lien and the seizure shall be requested within 10 days of the date that notice was placed in the United States mail.

(g) When a lien exists against one or more commercial coaches owned by the same person, persons, or company, the department may seize and sell a sufficient number of commercial coaches to satisfy the lien plus costs, in accordance with subdivision (a).

(h) Any state, municipality, or county law enforcement agency may assist with the seizure and impounding of the commercial coach.

(i) The department shall make a physical inventory of all the contents of a commercial coach that has been seized within 24 hours of the time of seizure. Copies of the inventory of contents shall be made available to any one rightfully entitled to that information.

(j) After deducting from the proceeds of sale, any amount due to satisfy the lien in favor of the state and the cost of the seizure and sale, any excess proceeds of sale shall be deposited in a special account. The registered owner, legal owner, or anyone claiming an interest in the mobilehome or its contents may file a claim to share in the excess proceeds of sale within one year from the date of sale. If any excess proceeds of sale remain in this special account after one year from the date of sale that money shall be transferred to the Mobilehome-Manufactured Home Revolving Fund.

SEC. 6. Section 18118 of the Health and Safety Code is amended to read:

18118. Whenever any application for a change, addition, or deletion of the registered owner's name or names is filed with the department during the 60 days immediately preceding the expiration date of the current registration of a manufactured home, mobilehome, or commercial coach, subject to annual renewal of registration, the application shall be accompanied by the full renewal fees for the ensuing registration year in addition to any other fees that may be due and payable.

CHAPTER 766

An act to amend Section 3513 of, to add Section 20930.33 to, and to add and repeal Section 20205.7 of, the Government Code, relating to public employees.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 3513 of the Government Code is amended to read:

3513. As used in this chapter:

(a) "Employee organization" means any organization which includes employees of the state and which has as one of its primary purposes representing these employees in their relations with the state.

(b) "Recognized employee organization" means an employee organization which has been recognized by the state as the exclusive representative of the employees in an appropriate unit.

(c) "State employee" means any civil service employee of the state, and the teaching staff of schools under the jurisdiction of the State Department of Education or the Superintendent of Public Instruction, except managerial employees, confidential employees, employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the board, conciliators employed by the State Conciliation Service within the Department of Industrial Relations, and intermittent athletic inspectors who are employees of the State Athletic Commission.

(d) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public agency and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice.

(e) "Managerial employee" means any employee having significant responsibilities for formulating or administering agency or departmental policies and programs or administering an agency or department.

(f) "Confidential employee" means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information contributing significantly to the development of management positions.

(g) "Board" means the Public Employment Relations Board. The Educational Employment Relations Board established pursuant to Section 3541 shall be renamed the Public Employment Relations Board as provided in Section 3540. The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter.

(h) "Maintenance of membership" means that all employees who voluntarily are, or who voluntarily become, members of a recognized employee organization shall remain members of such employee organization in good standing for a period as agreed to by the parties pursuant to a memorandum of understanding, commencing with the effective date of the memorandum of understanding. A maintenance of membership provision shall not apply to any employee who within 30 days prior to the expiration of the memorandum of understanding withdraws from the employee organization by sending a signed withdrawal letter to the employee organization and a copy to the State Controller's office.

(i) "State employer," or "employer," for the purposes of bargaining or meeting and conferring in good faith, means the Governor or his or her designated representatives.

(j) "Fair share fee" means the fee deducted by the state employer from the salary or wages of a state employee in an appropriate unit who does not become a member of and financially support the recognized employee organization. The fair share fee shall be used to defray the costs incurred by the recognized employee organization in fulfilling its duty to represent the employees in their employment relations with the state, and shall not exceed the standard initiation fee, membership dues, and general assessments of the recognized employee organization.

SEC. 2. Section 20205.7 is added to the Government Code, to read:

20205.7. Notwithstanding any other provision of law, the board 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 the following:

(a) 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 of the Financial Code.

(b) Securities representing a beneficial interest in a pool of obligations secured by a lien or charge solely on residential realty located in the state.

(c) Certificates of deposit issued by savings and loan associations,

if the savings and loan associations agree to make loans, or to fund tax-exempt notes or bonds issued by housing authorities, cities, or counties, on residential realty located in the state, including rental housing, in an amount equal to the amount of the deposit.

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 the board (in consideration thereof) purchases other such investments. In computing the amount of investment pursuant to this section, the board may elect to include the dollar amount of commitments to purchase mortgages from public revenue bond programs in the year the commitment is given. However that election may not exceed one-fifth of the total guideline amount.

Nothing in this section shall be construed to require the acquisition of any instrument or security at less than the market rate.

If the board 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 board may substitute those 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 the standard for prudent investment of the fund set forth in Section 17 of Article XVI of the California Constitution, the board may substitute alternative investments. In that case, the board 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.

This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 3. Section 20930.33 is added to the Government Code, to read:

20930.33. "Public service" with respect to a local member who

retired pursuant to this part before the effective date of the election of his or her employer to be subject to Section 20930.3 also means active service with the armed forces or the merchant marine of the United States, including time during any period of rehabilitation afforded by the United States government other than a period of rehabilitation for purely educational purposes, and for six months thereafter prior to the person's first employment by the employer under this section in which he or she was a member. Any retired person electing to receive credit for that public service shall, in addition to contributions otherwise required by this article, contribute an amount equal to the contributions for current and prior service that the employee and his or her employer would have made with respect to him or her had he or she been in membership for a period equal to the military service and assuming that the employer's rate in effect at the time of election and his or her compensation at the beginning of his or her first period of service in membership with the employer under this section had been in effect for that period.

The public service shall not include military service (a) in any period for which credit is otherwise given under this article or Article 4 (commencing with Section 20890), or (b) which is not continuous, or (c) to the extent that total credit under this section would exceed four years.

Notwithstanding Section 20933, a retired person may select which of two or more periods of continuous service entitles him or her to receive public service under this section.

This section shall apply to a retired person only if he or she retired immediately following service as a local member, pursuant to this part, and before the effective date of the election by his or her employer to be subject to Section 20930.3.

The retirement allowance of a retired person who elects to receive service credit pursuant to this section shall be increased only with respect to the allowance payable on and after the effective date of the election.

This section shall not apply to any contracting agency nor to the employees of any contracting agency unless and until the agency has elected to be subject to Section 20930.3 and elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or, in the case of contracts made after this section takes effect, by express provision in the contract making the contracting agency subject to both Section 20930.3 and this section.

CHAPTER 767

An act to amend Sections 3702, 3703, 3705, 4002, 4003, and 4006 of, to add Sections 3702.5, 3702.7, 3705.5, 4002.5, 4002.7, and 4009.5 to, to repeal Section 4004 of, and to repeal and add Sections 3704 and 4005 of, the Elections Code, relating to elections.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 3702 of the Elections Code is amended to read:

3702. (a) Before circulating any initiative petition in a county, or any petition relating to the annexation of territory by a county, the consolidation of counties, or the dissolution of a county, its proponents shall file with the clerk a notice of intention to do so. The notice shall be accompanied by the written text of the initiative and may be accompanied by a printed statement, not exceeding 500 words in length, stating the reasons for the proposed petition.

(b) The notice prescribed in subdivision (a), and a title and summary of the proposed measure prepared by the county counsel, shall be published at least once in a newspaper of general circulation published in that county.

(c) The notice shall be in substantially the following form:

Notice of Intention to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the County of _____ for the purpose of _____. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

(d) Any person filing a notice of intent with the county clerk shall pay a fee to be established by the board of supervisors not to exceed two hundred dollars ($200) to be refunded to the filer if, within one year of the date of filing the notice of intent, the county clerk certifies the sufficiency of the petition.

SEC. 2. Section 3702.5 is added to the Elections Code, to read:

3702.5. (a) Any person who is interested in any proposed measure shall file a copy of the proposed measure with the county clerk with a request that a ballot title and summary be prepared. This request shall be accompanied by the address of the person proposing the measure. The county clerk shall immediately transmit a copy of the proposed measure to the county counsel. Within 15 days after the proposed measure is filed, the county counsel shall provide and return to the county clerk a ballot title and summary for the proposed measure. The ballot title may differ from any other title of the proposed measure and shall express in 500 words or less the

purpose of the proposed measure. In providing the ballot title, the county counsel shall give a true and impartial statement of the purpose of the proposed measure in such language that the ballot title shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure.

(b) The county clerk shall furnish a copy of the ballot title to the person filing the proposed measure. The person proposing the measure shall, prior to its circulation, place upon each section of the petition, above the text of the proposed measure and across the top of each page of the petition on which signatures are to appear, in roman boldface type not smaller than 12-point, the ballot title prepared by the county counsel.

The heading of the proposed measure shall be in substantially the following form:

Initiative Measure to Be Submitted Directly to the Voters

The county counsel has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the county counsel. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

SEC. 3. Section 3702.7 is added to the Elections Code, to read:

3702.7. The proponent may seek a writ of mandate requiring the ballot title or summary prepared by the county counsel to be amended. The court shall expedite hearing on the writ. A peremptory writ of mandate shall be issued only upon clear and convincing proof that the ballot title or summary is false, misleading, or inconsistent with the requirements of Section 3702.5.

SEC. 3.5. Section 3703 of the Elections Code is amended to read:

3703. The county clerk shall ascertain the number of signatures required to sign the petition by obtaining the number of votes cast within the county for all candidates for Governor at the last gubernatorial election preceding the publication of the notice of intention to circulate the initiative petition.

SEC. 4. Section 3704 of the Elections Code is repealed.

SEC. 5. Section 3704 is added to the Elections Code, to read:

3704. The proponents may commence to circulate the petitions among the voters of the county for signatures by any registered voter of the county after publication of the title and summary prepared by the county counsel. Each section of the petition shall bear a copy of the notice of intention and the title and summary prepared by the county counsel.

SEC. 6. Section 3705 of the Elections Code is amended to read:

3705. Signatures shall be secured and the petition shall be presented to the county clerk for filing within 180 days from the date of receipt of the title and summary, or after termination of any action for a writ of mandate pursuant to Section 3702.7 and, if applicable, after receipt of an amended title or summary or both, whichever

occurs later.

SEC. 7. Section 3705.5 is added to the Elections Code, to read:

3705.5. (a) During the circulation of the petition or before taking either action described in subdivisions (a) and (b) of Section 3709, or Section 3711, the board of supervisors may refer the proposed initiative measure to any county agency or agencies for a report on any or all of the following:

(1) Its fiscal impact.

(2) Its effect on the internal consistency of the county's general and specific plans including the housing element, the consistency between planning and zoning, the limitations on county actions under Section 65008 of the Government Code, and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(3) Any other matters the board of supervisors request to be in the report.

(b) The report shall be presented to the board of supervisors within the time prescribed by the board of supervisors but no later than 45 days after the clerk certifies to the board of supervisors the sufficiency of the petition.

SEC. 8. Section 4002 of the Elections Code is amended to read:

4002. (a) Before circulating an initiative petition in any city, the proponents of the matter shall file with the clerk a notice of intention to do so, which shall be accompanied by the written text of the initiative and may be accompanied by a written statement not in excess of 500 words, setting forth the reasons for the proposed petition. The notice shall be signed by at least one, but not more than three, proponents and shall be in substantially the following form:

Notice of Intent to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of _____ for the purpose of _____. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

(b) Any person filing a notice of intent with the clerk shall pay a fee to be established by the legislative body not to exceed two hundred dollars ($200) to be refunded to the filer if, within one year of the date of filing the notice of intent, the clerk certifies the sufficiency of the petition.

SEC. 9. Section 4002.5 is added to the Elections Code, to read:

4002.5. (a) Any person who is interested in any proposed measure shall file a copy of the proposed measure with the clerk with a request that a ballot title and summary be prepared. This request shall be accompanied by the address of the person proposing the measure. The clerk shall immediately transmit a copy of the proposed measure to the city attorney. Within 15 days after the proposed measure is filed, the city attorney shall provide and return to the city clerk a ballot title for and summary of the proposed

measure. The ballot title may differ from any other title of the proposed measure and shall express in 500 words or less the purpose of the proposed measure. In providing the ballot title, the city attorney shall give a true and impartial statement of the purpose of the proposed measure in such language that the ballot title shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure.

(b) The clerk shall furnish a copy of the ballot title and summary to the person filing the proposed measure. The person proposing the measure shall, prior to its circulation, place upon each section of the petition, above the text of the proposed measure and across the top of each page of the petition on which signatures are to appear, in roman boldface type not smaller than 12-point, the ballot title prepared by the city attorney.

The heading of the proposed measure shall be in substantially the following form:

Initiative Measure to Be Submitted Directly to the Voters

The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the city attorney. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

SEC. 10. Section 4002.7 is added to the Elections Code, to read:

4002.7. The proponent may seek a writ of mandate requiring the ballot title or summary prepared by the city attorney to be amended. The court shall expedite hearing on the writ. A peremptory writ of mandate shall be issued only upon clear and convincing proof that the ballot title or summary is false, misleading, or inconsistent with the requirements of Section 4002.5.

SEC. 10.5. Section 4003 of the Elections Code is amended to read:

4003. A notice of intention and the title and summary of the proposed measure shall be published or posted or both as follows:

(a) If there is a newspaper of general circulation, as described in Section 6000 et seq. of the Government Code, adjudicated as such, the notice, title, and summary shall be published therein at least once.

(b) If the petition is to be circulated in a city in which there is no adjudicated newspaper of general circulation, the notice, title, and summary shall be published at least once, in a newspaper circulated within the city and adjudicated as being of general circulation within the county in which the city is located and the notice, title, and summary shall be posted in three (3) public places within the city, which public places shall be those utilized for the purpose of posting ordinances as required in Section 36933 of the Government Code.

(c) If the petition is to be circulated in a city in which there is no adjudicated newspaper of general circulation, and there is no newspaper of general circulation adjudicated as such within the

county, circulated within the city, then the notice, title, and summary shall be posted in the manner described in subdivision (b).

SEC. 11. Section 4004 of the Elections Code is repealed.

SEC. 12. Section 4005 of the Elections Code is repealed.

SEC. 13. Section 4005 is added to the Elections Code, to read:

4005. The proponents may commence to circulate the petitions among the voters of the city for signatures by any registered voter of the city after publication of the title and summary prepared by the city attorney. Each section of the petition shall bear a copy of the notice of intention and the title and summary prepared by the city attorney.

SEC. 14. Section 4006 of the Elections Code is amended to read:

4006. Signatures upon petitions and sections of petitions shall be secured, and the petition, together with all sections of the petition, shall be filed within 180 days from the date of receipt of the title and summary, or after termination of any action for a writ of mandate pursuant to Section 4002.7, and, if applicable, after receipt of an amended title or summary or both, whichever occurs later. Petitions and sections thereof shall be filed in the office of the clerk during normal office hours as posted. If the petitions are not filed within the time permitted by this section, the petitions shall be void for all purposes.

SEC. 15. Section 4009.5 is added to the Elections Code, to read:

4009.5. (a) During the circulation of the petition, or before taking either action described in subdivisions (a) and (b) of Section 4010, or Section 4011, the legislative body may refer the proposed initiative measure to any city agency or agencies for a report on any or all of the following:

(1) Its fiscal impact.

(2) Its effect on the internal consistency of the city's general and specific plans including the housing element, the consistency between planning and zoning, the limitations on city actions under Section 65008 of the Government Code, Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(3) Any other matters the council requests to be in the report.

(b) The report shall be presented to the legislative body within the time prescribed by the legislative body but no later than 45 days after the clerk certifies to the legislative body the sufficiency of the petition.

SEC. 16. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 768

An act to amend Section 1169 of the Code of Civil Procedure, relating to real property.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 1169 of the Code of Civil Procedure is amended to read:

1169. If at the time appointed any defendant served with a summons does not appear and defend, the clerk, or the judge if there is no clerk, upon written application of the plaintiff and proof of the service of summons and complaint, shall enter the default of any defendant so served, and, if requested by the plaintiff, immediately shall enter judgment for restitution of the premises and shall issue a writ of execution thereon. Thereafter, the plaintiff may apply to the court for any other relief demanded in the complaint, including the costs, against the defendant, or defendants, or against one or more of the defendants.

SEC. 2. Section 1 of this act shall not become effective unless Assembly Bill 893 of the 1987–88 Regular Session is chaptered.

CHAPTER 769

An act to amend Sections 1961, 1962, and 1962.5 of, and to add Section 1962.7 to, the Civil Code, relating to landlord-tenant.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 1961 of the Civil Code is amended to read:

1961. This chapter shall apply to every dwelling structure containing one or more units offered to the public for rent or for lease for residential purposes.

SEC. 2. Section 1962 of the Civil Code is amended to read:

1962. (a) Any owner of a dwelling structure specified in Section 1961 or a party signing a rental agreement or lease on behalf of the owner shall disclose therein the name and usual street address at which personal service may be effected of each person who is:

(1) Authorized to manage the premises.

(2) An owner of the premises or who is authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for all notices and demands.

(b) In the case of an oral rental agreement the owner or a person acting on behalf of the owner for the receipt of rent or otherwise, on written demand, shall furnish the tenant with a written statement containing the information required by subdivision (a).

(c) The information required by this section shall be kept current and this section shall extend to and be enforceable against any successor owner or manager, who shall comply with this section within 15 days of succeeding the previous owner or manager.

(d) A party who enters into a rental agreement on behalf of the owner who fails to comply with this section is deemed an agent of each person who is an owner:

(1) For the purpose of service of process and receiving and receipting for notices and demands.

(2) For the purpose of performing the obligations of the owner under law and under the rental agreement.

(e) Nothing in this section limits or excludes the liability of any undisclosed owner.

SEC. 3. Section 1962.5 of the Civil Code is amended to read:

1962.5. (a) Notwithstanding subdivisions (a) and (b) of Section 1962, the information required by Section 1962 to be disclosed to a tenant may, instead of being disclosed in the manner described in subdivisions (a) and (b) of Section 1962, be disclosed by the following method:

(1) In each dwelling structure containing an elevator a printed or typewritten notice containing the information required by Section 1962 shall be placed in every elevator and in one other conspicuous place.

(2) In each structure not containing an elevator, a printed or typewritten notice containing the information required by Section 1962 shall be placed in at least two conspicuous places.

(3) In the case of a single unit dwelling structure, the information to be disclosed under this section may be disclosed by complying with either paragraph (1) or (2).

(b) Except as provided in subdivision (a), all the provisions of Section 1962 shall be applicable.

SEC. 4. Section 1962.7 is added to the Civil Code, to read:

1962.7. In the event an owner specified in Section 1961 fails to comply with the requirements of this chapter, service of process by a tenant with respect to a dispute arising out of the tenancy may be made by registered or certified mail sent to the address at which rent is paid, in which case the provisions of Section 1013 of the Code of Civil Procedure shall apply.

SEC. 5. This act shall become operative only if Assembly Bill 2183 is enacted and becomes operative on or before January 1, 1988.

CHAPTER 770

An act to amend Section 3059 of the Business and Professions Code, relating to optometry, and making an appropriation therefor.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 3059 of the Business and Professions Code is amended to read:

3059. (a) It is the intent of the Legislature that the public health and safety would be served by requiring all holders of licenses to practice optometry granted under the provisions of this chapter to continue their education after receiving their licenses. The board shall adopt regulations which require, as a condition to the renewal thereof, that all holders of licenses submit proof satisfactory to the board that they have, during the preceding year, informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the board or by other means deemed equivalent by the board.

(b) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for reasons of health, military service, or other good cause.

(c) If for good cause compliance cannot be met for the current year, the board may grant exemption of compliance for that year, provided that a plan of future compliance that includes current requirements as well as makeup of previous requirements is approved by the board.

SEC. 2. The sum of twenty-three thousand dollars ($23,000) is hereby appropriated from the State Optometry Fund to the State Board of Optometry for the administration of Section 3059 of the Business and Professions Code for the 1987–88 fiscal year.

CHAPTER 771

An act relating to schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. The retaining wall, constructed at Ferndale High School, Ferndale, California, on Francis Creek in 1986 for the

Ferndale High School District, shall not be subject to the provisions of Article 3 (commencing with Section 39140) or Article 6 (commencing with Section 39210) of Chapter 2 of Part 23 of the Education Code.

This exemption from the so-called "Field Act" shall not, in and of itself, transfer any liability to the state. However, if the area is declared a disaster due to an Act of God, the exemption shall not preclude the district from applying for state or federal disaster relief funds.

SEC. 2. Due to the unique circumstances of a small school district, the Ferndale High School District, having incurred a substantial expense in the construction of a structure which does not present a hazard, and because the district would otherwise incur further expense if the structure was made subject to the so-called "Field 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. 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 clarify the rights and liabilities of parties and governmental entities relative to the structure covered by this act, at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 772

An act to amend Sections 7145 and 7146 of, and to add Section 12002.2 to, the Fish and Game Code, relating to sportfishing, and making an appropriation therefor.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 7145 of the Fish and Game Code is amended to read:

7145. Except as otherwise provided in this article, every person over the age of 16 years who takes any fish, reptile, or amphibia for any purpose other than profit shall obtain a license for that purpose.

SEC. 2. Section 7146 of the Fish and Game Code is amended to read:

7146. A license granting the privilege to take fish, reptiles, and amphibia for purposes other than profit shall be issued and delivered, upon application in writing, by the department or by any person authorized by the department.

SEC. 3. Section 12002.2 is added to the Fish and Game Code, to read:

12002.2. (a) Notwithstanding any other provision of law, a violation of Section 7145 is an infraction and not a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500). If a person is convicted of a violation of Section 7145 within five years of a separate offense resulting in a conviction of a violation of Section 7145, that person shall be punished by a fine of not less than two hundred fifty dollars ($250) nor more than five hundred dollars ($500). If a person convicted of a violation of Section 7145 is granted probation, the court shall impose as a term or condition of probation, in addition to any other term or condition of probation, that the person pay at least the minimum fine prescribed in this subdivision.

(b) If a person is convicted of a violation of Section 7145 and produces in court a valid license issued pursuant to Section 7146, the court may reduce the fine imposed for the violation of Section 7145 to fifty dollars ($50).

CHAPTER 773

An act to add Section 72253 to the Education Code, relating to education.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 72253 is added to the Education Code, to read:

72253. (a) The board of trustees of a community college district may establish an annual building and operating fee for the purpose of financing, constructing, enlarging, remodeling, refurbishing, and operating a student body center, which fee shall be required of all students attending a community college where the student body center is to be located. The fee shall be imposed by the board of trustees, at its option, only after a favorable vote of two-thirds of the students voting in an election held for that purpose at a community college, in the manner prescribed by the Chancellor of the California Community Colleges, and open to all regular students enrolled in credit classes at the community college. The election shall occur on a regularly scheduled schoolday and at least 20 percent of the students enrolled in credit classes as of October 1 of the school year during which the election is held must cast a ballot for the election to be declared valid. The annual building and operating fee shall not exceed one dollar ($1) per credit hour up to a maximum of ten dollars ($10) per student per fiscal year. The fee requirement shall

not apply to students enrolled in the noncredit courses designated by Section 84711. The fee requirement shall not apply to a student who is a recipient of the benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or the General Assistance program.

The fee authorized by this section shall be supplemental to all other fees charged to community college students.

If fee income is used to retire obligations the district incurs when it uses a revenue bond to construct a student center, the fee shall remain in effect at least until the bond obligation is retired.

(b) The chief fiscal officer of each community college district shall be responsible for the custody of the moneys collected pursuant to this section and shall provide the necessary accounting records and controls thereof. The district shall be reimbursed from these funds in an amount to cover the cost of custodial and accounting services provided by the district in connection with these funds. These funds may be expended by the chief fiscal officer only upon submission and approval of the appropriate claim schedule by the student government or its designee.

(c) All unexpended funds and money collected by any community college district pursuant to this section shall be available for financing, constructing, enlarging, remodeling, refurbishing, and operating a student body center, and until so used, shall, subject to the approval of the student government, be deposited or invested in trust by the chief fiscal officer of the district in any one or more of the following ways:

(1) Deposits in trust accounts of a bank or banks whose accounts are insured by the Federal Deposit Insurance Corporation.

(2) Investment certificates or withdrawable shares in state chartered savings and loan associations and savings accounts of federal savings and loan associations, if the associations are doing business in this state and have their accounts insured by the Federal Savings and Loan Insurance Corporation.

(3) Purchase of any of the securities authorized for investment by Section 16430 of the Government Code.

(4) Participation funds that are exempt from federal income tax pursuant to Section 501 (c) (3) of the Internal Revenue Code and that are open exclusively to nonprofit colleges, universities, and independent schools.

(5) Investment certificates or withdrawable shares in federal or state credit unions, if the credit unions are doing business in this state and have their accounts insured by the National Credit Union Administration and if any money so invested or deposited is invested or deposited in certificates, shares, or accounts fully recovered by that insurance.

(6) Deposits with the county treasurer of the county in which the district is located.

(d) The student government of a community college with an

annual building and operating fee pursuant to this section shall determine the appropriate uses of the fee income and the student body center facility itself.

CHAPTER 774

An act to add Article 5 (commencing with Section 4191) to Chapter 6 of Part 3 of Division 3 of the Food and Agricultural Code, relating to taxation.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Article 5 (commencing with Section 4191) is added to Chapter 6 of Part 3 of Division 3 of the Food and Agricultural Code, to read:

Article 5. Associations Representing More Than One County

4191. A city may not impose any tax, except a sales or use tax, on any association that represents more than one county and owns land in each of the counties it represents. A city may not, without the consent of the board of such an association, impose any tax, except a sales or use tax, on any of the concessionaires or rental contractors of the association as to events which take place on the property of the association.

4192. The city and the association shall enter into an agreement for the provision of police and fire protection services to the association.

This contract shall require the payment by the association of the reasonable direct actual cost of police or fire protection services.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 775

An act to amend Section 42007 of, and to repeal Sections 42008 and 42009 of, the Vehicle Code, relating to traffic violations.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 42007 of the Vehicle Code is amended to read:

42007. (a) The clerk of the court shall collect a uniform fee not to exceed twenty-four dollars ($24) from every person who is ordered or permitted to attend a traffic violator school pursuant to Section 42005 or who attends any other court-supervised program of driving instruction. The fee shall be in an amount ordered by a majority of the judges, or by the sole judge, of a superior, municipal, or justice court. The amount of the fee shall be sufficient to recover the administrative costs of this section, and the cost incurred by the court in carrying out Section 42005 or in supervising any other similar program, and shall include the following amounts:

(1) In any county in which a fund is established pursuant to Section 76001, 76002, 76004, or 76006 of the Government Code, the sum of one dollar ($1) for each fund so established.

(2) The sum of eight dollars and ninety cents ($8.90) for the issuing local governmental entity as specified in paragraph (2) of subdivision (b).

The fee shall not include the cost, or any part thereof, of instruction offered by the school or other program.

(b) Revenues derived from the fee collected under this section shall be allocated as follows:

(1) The amount collected under paragraph (1) of subdivision (a) shall be deposited with the county treasurer and placed in the fund established pursuant to Section 76001, 76002, 76004, or 76006 of the Government Code.

(2) The amount collected under paragraph (2) of subdivision (a) shall be deposited by the clerk in accordance with Section 68084 of the Government Code. The clerk shall report to the county auditor which agency issued the notice to appear for which the fee was collected, and the county shall transfer to the issuing local governmental entity monthly for deposit in the general fund of the entity eight dollars and ninety cents ($8.90) for each notice to appear it issued.

(3) The remaining amount collected under subdivision (a) shall be deposited by the clerk in accordance with Section 68084 of the Government Code. The county board of supervisors may use these funds for any county purpose.

(c) As used in this section, "court-supervised program" includes,

but is not limited to, any program of driving instruction the successful completion of which is accepted by the court in lieu of adjudicating a violation of this code.

SEC. 2. Section 42008 of the Vehicle Code is repealed.

SEC. 3. Section 42009 of the Vehicle Code is repealed.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 776

An act to repeal Section 1 of Chapter 164 of the Statutes of 1984, relating to parks and recreation.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 1 of Chapter 164 of the Statutes of 1984 is repealed.

CHAPTER 777

An act to add Section 7501 to the Welfare and Institutions Code, relating to children.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 7501 is added to the Welfare and Institutions Code, to read:

7501. (a) The Department of General Services, in cooperation with the State Department of Developmental Services and the State Department of Mental Health, may sell or lease property within the boundaries of Camarillo State Hospital described in subdivision (b) to Ventura County which shall sublet the property to a nonprofit organization for the purpose of constructing and operating a 70-bed childrens' crisis care center to provide an alternative to emergency shelter home placement. The facility shall provide for an interagency program for the delivery of medical, educational, and mental health screening, crisis intervention, short-term mental health treatment, and case management services for children who are removed from

their families due to abuse, neglect, abandonment, sexual molestation, or who are in acute mental health crisis requiring short-term nonhospital care and supervision described in subdivision (c).

(b) (1) The property is a 22.8 acre portion of Rancho Guadalasca, in the County of Ventura, State of California, as described in the Letters of Patent dated September 1, 1873, recorded in Book 1, Page 153 of Patents, in the office of the County Recorder of the county and described as follows:

Beginning at the northwesterly terminus of the Fourth Course of that parcel described in the deed recorded on June 9, 1932, in Book 358, Page 371 of Official Records, in said Recorder's Office; thence, along said Fourth Course,

1st – South 47°23'33" East 1150.00 feet to the northeasterly terminus of the 38th Course of Parcel 1 described in the deed recorded on April 17, 1973, in Book 4101, Page 237 of said Official Records; thence, along said 38th Course,

2nd – South 42°37'00" West 1026.00 feet; thence, parallel with the First Course herein,

3rd – North 47°23'33" West 800.00 feet; thence, parallel with the Second Course herein,

4th – North 42°37'00" East 666.00 feet; thence, parallel with the First Course herein,

5th – North 47°23'33" West 350.00 feet to the intersection with the Third Course of said parcel described in the deed recorded in Book 358, Page 371 of said Official Records; thence, along said Third Course,

6th – North 42°37'00" East 360.00 feet to the point of beginning.

(2) The lease shall in no instance expire prior to the expiration date in the year 2027 of the lease between the State of California and Ventura County on the immediately adjacent property which shares the eastern boundary of the parcel described in this subdivision.

(3) Notwithstanding any other provision of this section, if the parcel described in this subdivision is purchased or leased from the state, 50 percent of the proceeds shall accrue to the State Department of Mental Health and 50 percent to the Department of Developmental Services.

(4) The Department of General Services may enter into a sale or lease at less than fair market value. The department is authorized to

lease the parcel for not more than 40 years.

(c) Any of the following children are eligible for placement in the children's crisis care center:

(1) Any child who has been placed in protective custody and legally detained under Section 300 as a victim of abuse, neglect, or abandonment. The child shall be age four or older, except for any younger child who has been a victim of extreme physical abuse, sexual abuse, or violent behavior, and, therefore, in need of professional crisis intervention or extended medical care. Any example of the latter is an infant born undergoing heroin withdrawal or an infant who requires shelter care because of physical abuse resulting in a cast on the arm or leg.

(2) Any dependent minor of the juvenile court whose placement has been disrupted, and who is in need of temporary placement, as well as crisis intervention and assessment services.

(3) Any voluntarily placed emotionally disturbed child in crisis as determined appropriate by the mental health case manager. The purpose of this placement is to deescalate the crisis, provide assessment and diagnostic services for a recommendation of appropriate treatment and ongoing placement, and to reduce the utilization of private or state psychiatric hospitalization.

(4) Any eligible child who is a resident of any county in California, subject to the availability of space.

CHAPTER 778

An act to amend Section 12511 of, and to add Chapter 7 (commencing with Section 12527) to Division 9 of, the Elections Code, relating to elections.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 12511 of the Elections Code is amended to read:

12511. "Campaign advertising or communication" means a communication authorized by a candidate or a candidate's controlled committee, as defined in Section 82016 of the Government Code, or by a committee making independent expenditures, as defined in Section 82031 of the Government Code, or by a committee formed primarily to support or oppose a ballot measure, as defined in Section 82047.5 of the Government Code, for the purpose of advocating the election or defeat of a qualified candidate or ballot measure through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general, public, political advertising.

SEC. 2. Chapter 7 (commencing with Section 12527) is added to Division 9 of the Elections Code, to read:

CHAPTER 7. LIBEL AND SLANDER

12527. The provisions of Part 2 (commencing with Section 43) of Division 1 of the Civil Code, relating to libel and slander, are fully applicable to any campaign advertising or communication as defined by Section 12511.

12528. (a) A candidate or state measure proponent is liable for any slander or libel committed by a committee which is controlled by that candidate or state measure proponent as defined by Section 82016 of the Government Code if the candidate or state measure proponent willfully and knowingly directs or permits the libel or slander.

(b) A person who is a sponsor of a sponsored committee, as defined by Section 82048.5 of the Government Code, is liable for any slander or libel committed by the sponsored committee if the sponsor willfully and knowingly directs or permits the libel or slander.

SEC. 3. The addition of Chapter 7 (commencing with Section 12527) to Division 9 of the Elections Code by Section 2 of this act does not constitute a change in, but is declaratory of, existing law.

CHAPTER 779

An act to amend Sections 12240 and 12246 of, and to repeal Sections 12241 and 12245 of, the Business and Professions Code, relating to weights and measures.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 12240 of the Business and Professions Code is amended to read:

12240. (a) 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, except as provided in subdivision (d). 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 of Maximum Annual Charges set forth in subdivision (c), 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.

(b) Retail gasoline pump meters, for which the above fees are assessed, shall be inspected as frequently as required by regulations, but not less than once every two years.

(c) Table of Maximum Annual Charges:

Number of Devices	1 to 3	4 to 9	Over 9
Charge Per Location	$20	$40	$60

(d) This section does not apply to the following devices:

(1) Livestock scales.

(2) Animal scales.

(3) Farm milk tanks.

(4) Scales used primarily for weighing feed and seed.

SEC. 2. Section 12241 of the Business and Professions Code is repealed.

SEC. 3. Section 12245 of the Business and Professions Code is repealed.

SEC. 4. Section 12246 of the Business and Professions Code is amended to read:

12246. This article shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1990, deletes or extends that date.

CHAPTER 780

An act to amend Section 1036 of, and to add Section 1036.7 to the Penal Code, relating to, criminal trials.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 1036 of the Penal Code is amended to read:

1036. (a) Unless the court reserves jurisdiction to hear other pretrial motions, if a defendant is incarcerated and the court orders a change of venue to another county, the court shall direct the sheriff to deliver the defendant to the custody of the sheriff of the other county for the purpose of trial.

(b) If the defendant is incarcerated and the court orders that the jury be selected from the county to which the venue would otherwise have been transferred pursuant to Section 1036.7, the court shall direct the sheriff to deliver the defendant to the custody of the sheriff of that county for the purpose of jury selection.

SEC. 2. Section 1036.7 is added to the Penal Code, to read:

1036.7. When a change of venue is ordered and the court, upon

motion to transfer a jury or on its own motion and upon unanimous consent of all defendants, determines that it would be in the interests of the administration of justice to move the jury rather than to move the pending action, a change of venue may be accomplished by the selection of a jury in the county or judicial district to which the venue would otherwise have been transferred, and the selected jury shall be moved to the court in which the criminal action is pending.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 781

An act to add Section 12309 to the Welfare and Institutions Code, relating to in-home supportive services.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 12309 is added to the Welfare and Institutions Code, to read:

12309. (a) To carry out the intent of this article, which provides that in-home supportive services be delivered in all counties in a uniform manner, the department shall report by July 1, 1989, on its implementation of all of the following:

(1) A uniform client needs assessment tool used in collecting information which includes, but is not limited to, the client's living environment, alternative resources, and functional abilities.

(2) A uniform method for determining each client's functional abilities.

(3) Uniform statewide training, including training materials, on needs assessments, and on determining each client's functional abilities.

(b) The report shall include all of the following:

(1) County-by-county data, where appropriate, and an evaluation of the implementation of paragraphs (1) and (2) of subdivision (a).

(2) The department's evaluation of the need for a uniform method of determining hours of services needed and, if appropriate, legislation needed for its implementation.

CHAPTER 782

An act to amend Section 11512.2 of the Insurance Code, relating to insurance.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 11512.2 of the Insurance Code is amended to read:

11512.2. Group hospital service contracts may be issued in conformity with all of the following conditions:

(a) Written under a master hospital service contract,

(1) Issued either to the federal or state government, or to any federal or state agency, political subdivision or district, or to any public, governmental, or municipal corporation, or to any unit, agency, or department thereof, or to any corporation, copartnership, or individual employer, or to the trustee of any association of employers, offering hospital services to all the employees of any such employer or of the employer members of such association or to all of any class or classes thereof determined by conditions pertaining to employment and covering not less than 10 such employees or such employees together with their dependents or spouses for amounts of hospital services based upon some plan which will preclude individual selection by the employee as to the amount of hospital services he or she may obtain thereunder; or

(2) Issued to any association having a constitution and bylaws and formed in good faith for purposes other than that of obtaining insurance offering hospital services to all the members, or class of members, of such association and covering not less than 10 such members or such members together with their dependents or spouses and not less than 25 percent of all eligible members, or class of members, for amounts of hospital services based upon some plan which will preclude individual selection by the member as to the amount of hospital services he or she may obtain thereunder. Any such master hospital service contract shall by its terms require the rates, dues, fees, or other periodic charges to be paid to the corporation either by means of payroll deduction or periodically by some designated person acting on behalf of the association covered; or

(3) Issued to an association or to a trust, or to the trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum membership of 100 persons, and shall be organized and maintained in good faith for purposes other than that of obtaining insurance. The association or associations shall have been in active existence for at least two years, and shall have a

constitution and bylaws which require regular meetings not less than annually to further purposes of the members. The members shall have voting privileges and representation on the governing board or boards and committees. The policy shall be subject to the following requirements:

(A) The policy may insure members of the association or associations, and employees thereof.

(B) The premium for the policy shall be paid from funds contributed by the association or associations, or by members, or by both, or from funds contributed by the covered persons, or from both the covered persons and the association.

(C) A policy on which no part of the premium is to be derived from funds contributed by the covered persons specifically for the insurance shall insure all eligible persons, except those who, in writing, reject the coverage.

(4) Issued to any trustees eligible to have issued to them a policy of group life insurance under the provisions of Section 10202.8 and covering not less than 10 employees or members eligible thereunder to be covered or such employees or members together with their dependents or spouses; and under which

(b) For delivery to each person covered under the master hospital service contract, other than dependents or spouses of an insured employee or person, there is issued to the holder of such master hospital service contract by the corporation an individual certificate setting forth the benefits and the exceptions under, and referring to, the master hospital service contract under which the certificate is issued.

(c) In the case of a group contract providing comprehensive health care services issued under subdivision (e) of Section 11493, no such group contract may be offered to any group unless the master contract holder is apprised that at least one alternative arrangement providing health care services may be made available to all members of the group at the option of the master contract holder which affords free choice among physicians, dentists, other practitioners of the healing arts, pharmacists, pharmacies, and health facilities to individual members of the group to the extent those services are made available thereunder.

SEC. 2. Section 11512.2 of the Insurance Code is amended to read:

11512.2. Group hospital service contracts may be issued in conformity with all of the following conditions:

(a) Written under a master hospital service contract,

(1) Issued either to the federal or state government, or to any federal or state agency, political subdivision or district, or to any public, governmental, or municipal corporation, or to any unit, agency, or department thereof, or to any corporation, copartnership, or individual employer, or to the trustee of any association of employers, offering hospital services to all the employees of any such employer or of the employer members of such association or to all

of any class or classes thereof determined by conditions pertaining to employment and covering not less than three such employees or such employees together with their dependents or spouses for amounts of hospital services based upon some plan which will preclude individual selection by the employee as to the amount of hospital services he or she may obtain thereunder; or

(2) Issued to any association having a constitution and bylaws and formed in good faith for purposes other than that of obtaining insurance offering hospital services to all the members, or class of members, of such association and covering not less than three such members or such members together with their dependents or spouses and not less than 25 percent of all eligible members, or class of members, for amounts of hospital services based upon some plan which will preclude individual selection by the member as to the amount of hospital services he or she may obtain thereunder. Any such master hospital service contract shall by its terms require the rates, dues, fees, or other periodic charges to be paid to the corporation either by means of payroll deduction or periodically by some designated person acting on behalf of the association covered; or

(3) Issued to an association or to a trust, or to the trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum membership of 100 persons, and shall be organized and maintained in good faith for purposes other than that of obtaining insurance. The association or associations shall have been in active existence for at least two years, and shall have a constitution and bylaws which require regular meetings not less than annually to further purposes of the members. The members shall have voting privileges and representation on the governing board or boards and committees. The policy shall be subject to the following requirements:

(A) The policy may insure members of the association or associations, and employees thereof.

(B) The premium for the policy shall be paid from funds contributed by the association or associations, or by members, or by both, or from funds contributed by the covered persons, or from both the covered persons and the association.

(C) A policy on which no part of the premium is to be derived from funds contributed by the covered persons specifically for the insurance shall insure all eligible persons, except those who, in writing, reject the coverage.

(4) Issued to any trustees eligible to have issued to them a policy of group life insurance under the provisions of Section 10202.8 and covering not less than 10 employees or members eligible thereunder to be covered or such employees or members together with their dependents or spouses; and under which

(b) For delivery to each person covered under the master hospital service contract, other than dependents or spouses of an insured

employee or person, there is issued to the holder of such master hospital service contract by the corporation an individual certificate setting forth the benefits and the exceptions under, and referring to, the master hospital service contract under which the certificate is issued.

(c) In the case of a group contract providing comprehensive health care services issued under subdivision (e) of Section 11493, no such group contract may be offered to any group unless the master contract holder is apprised that at least one alternative arrangement providing health care services may be made available to all members of the group at the option of the master contract holder which affords free choice among physicians, dentists, other practitioners of the healing arts, pharmacists, pharmacies, and health facilities to individual members of the group to the extent those services are made available thereunder.

SEC. 3. Section 2 of this bill incorporates amendments to Section 11512.2 of the Insurance Code proposed by both this bill and SB 303. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 11512.2 of the Insurance Code, and (3) this bill is enacted after SB 303, in which case Section 1 of this bill shall not become operative.

CHAPTER 783

An act to amend Sections 2703 and 2705 of, and to add Section 2709.1 to, the Public Resources Code, relating to seismic safety, and making an appropriation therefor.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

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

(a) Earthquakes will continue to occur in California. There is a 50 percent chance that a major damaging earthquake will occur within the next 20 years. Smaller damaging earthquakes occur more often.

(b) The motion of buildings and other structures cannot be understood completely without actual measurements of real buildings and other structures during earthquakes.

(c) Under the strong-motion instrumentation program, strong-motion instruments are installed in buildings, transportation structures, dams, and other critical lifeline facilities in order to be ready to record damaging earthquake motion information.

(d) Information recorded under the program will be used to improve building codes for new buildings, identify existing buildings that may be hazardous, and help determine ways to strengthen

them.

(e) To be successful, there is a race against time to install instruments in a representative sample of typical structures before a damaging earthquake occurs.

(f) At the current fee structure rate, the strong-motion instrumentation program will not accomplish its mission until the year 2060 and increased funding is therefore needed.

SEC. 2. Section 2703 of the Public Resources Code is amended to read:

2703. The division shall maintain and service the strong-motion instruments installed, shall collect and interpret all records from the instruments, and shall make the records, record interpretations, and technical assistance available to the construction industry.

SEC. 3. Section 2705 of the Public Resources Code is amended to read:

2705. (a) All counties and cities shall collect a fee from each applicant for a building permit. Each such fee shall be equal to a specific amount of the proposed building construction for which the building permit is issued as determined by the local building officials. The fee amount shall be assessed in the following way:

(1) Group R occupancies, as defined in the 1985 Uniform Building Code and adopted in Part 2 (commencing with Section 2-101) of Title 24 of the California Administrative Code, one to three stories in height, except hotels and motels, shall be assessed at the rate of seven dollars ($7) per one hundred thousand dollars ($100,000), with appropriate fractions thereof.

(2) All other buildings shall be assessed at the rate of fifteen dollars ($15) per one hundred thousand dollars ($100,000), with appropriate fractions thereof.

(3) The fee shall be the amount assessed under paragraph (1) or (2), depending on building type, or fifty cents ($0.50), whichever is the higher.

(b) In lieu of the requirements of subdivision (a), a county or city may elect to include a rate of seven dollars ($7) per one hundred thousand dollars ($100,000), with appropriate fractions thereof, in its basic building permit fee for any Group R occupancy defined in paragraph (1) of subdivision (a), and a rate of fifteen dollars ($15) per one hundred thousand dollars ($100,000), with appropriate fractions thereof, for all other building types. If collection of the fee is made pursuant to this subdivision, the amount of the fees required to be deposited in the Strong-Motion Instrumentation Special Fund pursuant to Section 2706 shall be equal to the sum of 0.007 percent of the total valuation of any Group R occupancy defined in paragraph (1) of subdivision (a), plus 0.015 percent of the total valuation of all other building types, for which building permits were issued during the accounting period. A county or city electing to collect the fee pursuant to this subdivision need not segregate the fees in a fund separate from any fund into which basic building permit fees are deposited.

"Building," for the purpose of this chapter, is any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

(c) A city or county may retain up to 5 percent of the total amount it collects under subdivision (a) or (b) for data utilization and seismic education incorporating data interpretations from data of the strong-motion instrumentation program.

SEC. 4. Section 2709.1 is added to the Public Resources Code, to read:

2709.1. (a) After January 1, 1988, no strong-motion instrumentation shall be installed pursuant to this chapter in the structural types identified in subdivision (b) unless funds proportionate to the construction value as called for under Section 2705 are received from organizations or entities representing these structural types, or the instrumentation is specifically called for by the Seismic Safety Commission in urgency situations.

(b) The structural types subject to this section include all of the following:

(1) Hospitals.

(2) Dams.

(3) Bridges.

(4) Schools.

(5) Powerplants.

(c) The Strong-Motion Instrumentation Special Fund may accept funds from sources other than the permit fees identified in this chapter. The priority of installations performed under this chapter shall be determined by the Seismic Safety Commission.

SEC. 5. On or before January 1, 1996, the Seismic Safety Commission shall review and assess the effectiveness and completeness of the strong-motion instrumentation program, including the fee structure under which the program is being carried out, to determine if changes are warranted in the method or mode of fee collection.

CHAPTER 784

An act to amend Section 11005 of the Government Code, and to amend Section 5005 of the Public Resources Code, relating to gifts to the state.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

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

11005. Unless the Legislature specifically provides that approval

is not required, every gift or dedication to the state of personal property, or every gift to the state of real property in fee or in any lesser estate or interest, shall be approved by the Director of Finance, and every contract for the acquisition or hiring of real property in fee or in any lesser estate or interest, entered into by or on behalf of the state, shall be approved by the Director of General Services. Any contract entered into in violation of this section is void. This section applies to any state agency which, by general or specific statute, is expressly or impliedly authorized to enter into transactions referred to in this section. This section does not apply (1) to unconditional gifts of money, (2) to the acquisition or hiring by the Department of Transportation of real property in fee or in any lesser estate or interest for highway purposes, but does apply to the hiring by that department of office space in any office building, (3) to contracts entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, (4) to the receipt of donated, unencumbered personal property from private sources received in conjunction with the administration of the Federal Surplus Personal Property Program by the Department of General Services, or (5) to the receipt of gifts of personal property in the form of interpretive or historical objects, each valued at fifteen thousand dollars ($15,000) or less, by the Department of Parks and Recreation.

SEC. 2. Section 5005 of the Public Resources Code is amended to read:

5005. (a) The department may receive and accept in the name of the people of the state any gift, dedication, devise, grant, or other conveyance of title to or any interest in real property, including water rights, roads, trails, and rights-of-way, to be added to or used in connection with the park system. It may receive and accept gifts, donations, contributions, or bequests of money to be used in acquiring title to or any interest in real property, or in improving it as a part of or in connection with the State Park System, or to be used for any of the purposes for which the department is created. It may also receive and accept personal property for any purpose connected with the park system.

(b) Subdivision (a) is subject to the requirements and exceptions set forth in Section 11005 of the Government Code.

CHAPTER 785

An act to add Section 205 to the Penal Code, relating to crime.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 205 is added to the Penal Code, to read:

205. A person is guilty of aggravated mayhem when he or she unlawfully, under circumstances manifesting extreme indifference to the physical or psychological well-being of another person, intentionally causes permanent disability or disfigurement of another human being or deprives a human being of a limb, organ, or member of his or her body. For purposes of this section, it is not necessary to prove an intent to kill. Aggravated mayhem is a felony punishable by imprisonment in the state prison for life with the possibility of parole.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 786

An act to add Division 19 (commencing with Section 180000) to the Public Utilities Code, and to add Sections 7251.1, 7252.16, and 7273.2 to the Revenue and Taxation Code, relating to local transportation authorities.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Division 19 (commencing with Section 180000) is added to the Public Utilities Code, to read:

DIVISION 19. LOCAL TRANSPORTATION AUTHORITIES

CHAPTER 1. GENERAL PROVISIONS

180000. This division shall be known and may be cited as the Local Transportation Authority and Improvement Act.

180001. The Legislature hereby finds and declares all of the

following:

(a) Local highway and transportation improvements and services are an immediate high priority needed to resolve local and regional transportation problems that threaten the economic viability and development potential of counties and cities and adversely impact the quality of life therein. Furthermore, regional transportation is a matter of statewide concern.

(b) Comprehensive studies and reports have been completed by the Department of Transportation, the Assembly Office of Research, the Governor's Task Force on Infrastructure, and the California Business Roundtable which conclude that there exists a local city street and county road maintenance backlog and shortfall of between five hundred million dollars ($500,000,000) and eight hundred forty million dollars ($840,000,000) annually.

(c) In order to deal in an expeditious manner with current and future local transportation maintenance and improvement needs, local agencies need to develop and implement local funding programs that go significantly beyond current federal and state funding which is inadequate to resolve these problems.

(d) It is in the public interest to allow the voters of each county to establish local transportation authorities and raise additional local revenues to provide highway capital improvements and maintenance and to meet local transportation needs in a timely manner.

(e) It is the intent of the Legislature that funds generated pursuant to this division be used to supplement and not replace existing local revenues used for transportation purposes.

180002. "Authority" means a local transportation authority created or designated pursuant to this division.

180003. This division shall be liberally construed in order to effectuate its purposes. No inadvertent error, irregularity, informality, or the inadvertent neglect or omission of any officer, in any procedure taken under this division, other than fraud, shall void or invalidate that proceeding or any levy imposed to finance highway improvements or local transportation needs.

CHAPTER 2. CREATION OF LOCAL TRANSPORTATION AUTHORITY

180050. A county board of supervisors may create an authority to operate within the county to carry out this division, or may designate a transportation planning agency designated pursuant to Section 29532 of the Government Code or a county transportation commission created pursuant to the County Transportation Act (Division 12 (commencing with Section 130000)) in existence in the county on January 1, 1988, to serve as an authority.

180051. A board of supervisors choosing to create an entirely new entity as an authority, shall determine the membership of the authority with the concurrence of a majority of the cities having a majority of the population in the incorporated area of the county.

Each member of the authority shall be an elected official of a local governmental entity within or partly within the county. Members of the board of supervisors serving on an authority shall comprise less than a majority thereof.

180052. (a) Except as provided in subdivision (b), members of an authority which is an entirely new entity shall serve for a term of not more than four years.

(b) At the first meeting of an authority which is an entirely new entity convened pursuant to Section 180112 the members shall be selected by lot to serve staggered terms.

CHAPTER 3. ADMINISTRATION

180100. The authority at its first meeting, and thereafter annually at the first meeting in January, shall elect a chairperson who shall preside at all meetings, and a vice chairperson who shall preside in the absence of the chairperson. In the event of their absence or inability to act, the members present, by an order entered in the minutes, shall select one of their members to act as chairperson pro tempore, who, while so acting, shall have all the authority of the chairperson.

180101. The authority shall adopt rules for its proceedings consistent with the laws of the state.

180102. A majority of the members of the authority constitutes a quorum for the transaction of business, and all official acts of the authority requires the affirmative vote of a majority of the members of the authority.

180103. The acts of the authority shall be expressed by motion, resolution, or ordinance.

180104. All meetings of the authority shall be conducted pursuant to Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code.

180105. The authority shall do all the following:

(a) Adopt an annual budget.

(b) Adopt an administrative code, by ordinance, which prescribes the powers and duties of the authority officers, the method of appointment of the authority employees, and methods, procedures, and systems of operation and management of the authority.

(c) Cause a postaudit of the financial transactions and records of the authority to be made at least annually by a certified public accountant.

(d) Do any and all things necessary to carry out the purposes of this division.

The authority may appoint a policy advisory committee.

180106. The authority may hire an independent staff of its own or contract with any department or agency of the United States or with any public agency to implement this division.

180107. The authority shall fix the compensation of its officers and employees.

180108. (a) Notice of the time and place of a public hearing on the adoption of the annual budget shall be published pursuant to Section 6061 of the Government Code not later than the 15th day prior to the day of the hearing.

(b) The proposed annual budget shall be available for public inspection at least 15 days prior to the hearing.

180109. (a) The authority shall rely, to the extent possible, on existing state, regional, and local transportation planning and programming data and expertise, rather than on a large duplicative staff and set of plans.

(b) The authority shall not expend more than 1 percent of the funds generated pursuant to this division in any year for salary and benefits of its staff.

180110. The authority shall consult with, and coordinate its actions to secure funding for the completion and improvement of the priority regional highways, with the cities in the county, the board of supervisors, and the Department of Transportation, for the purpose of integrating its planned highway improvements with the highway and other transportation improvement plans and operations of other transportation agencies impacting the county.

180111. The authority shall prepare and adopt an annual report each year on progress made to achieve the objective of improving transportation conditions related to priority highway operations and local transportation needs.

180112. The initial meeting of the authority shall convene within 90 days of the approval of the transactions and use tax at the election conducted pursuant to Chapter 5 (commencing with Section 180200). The Secretary of the Business, Transportation and Housing Agency shall convene the initial meeting.

CHAPTER 4. POWERS AND FUNCTIONS

180150. The authority may sue and be sued, except as otherwise provided by law, in all actions and proceedings, in all courts and tribunals of competent jurisdiction.

180151. All claims for money or damages against the authority are governed by Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, except as provided therein, or by other statutes or regulations expressly applicable thereto.

180152. The authority may make contracts and enter into stipulations of any nature whatsoever, either in connection with eminent domain proceedings or otherwise, including, but not limited to, contracts and stipulations to indemnify and hold harmless, to employ labor, and to do all acts necessary and convenient for the full exercise of the powers granted in this division.

180153. The authority may contract with any department or agency of the United States, with any public agency, including, but not limited to, the Department of Transportation, any county, city, or district, or with any person upon any terms and conditions that the

authority finds in its best interest.

180154. (a) Contracts for the purchase of services, supplies, equipment, and materials in excess of ten thousand dollars ($10,000) shall be awarded to the lowest responsible bidder after competitive bidding, except in an emergency declared by the authority or by an executive committee to which the authority has delegated responsibility to make that declaration.

(b) If, after rejecting bids received under subdivision (a), the authority determines and declares that, in its opinion, the services, supplies, equipment, or materials may be purchased at a lower price on the open market, the authority may proceed to purchase these services, supplies, equipment, or materials in the open market without further observance of the provisions regarding contracts, bids, or advertisements.

CHAPTER 5. TRANSACTIONS AND USE TAXES

180200. The Legislature, by the enactment of this division, intends that the additional funds provided governmental agencies by this chapter shall supplement existing local revenues being used for public transportation purposes and that local governments maintain their existing commitment of local funds for transportation purposes.

The Legislature further intends that transportation authorities utilize "pay-as-you-go" financing as the preferred method of funding transportation improvements and operations authorized by Section 180205, and that bond financing be utilized as an alternative method of funding, where the scope of the planned expenditures makes "pay-as-you-go" financing unfeasible.

180201. A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of a county may be imposed by the authority in accordance with this chapter and Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, if the ordinance is adopted by a two-thirds vote of the authority and is subsequently approved by a majority of the electors voting on the measure at a special election called for that purpose by the board of supervisors, at the request of the authority, and a county transportation expenditure plan is adopted pursuant to Section 180206.

A retail transactions and use tax approved by the electors shall remain in effect for not longer than 20 years, or any lesser period of time specified in the ordinance. The tax may be continued in effect, or reimposed, by an ordinance adopted by a two-thirds vote of the authority and approved by a majority of the electors.

180202. The authority, in the ordinance, shall state the nature of the tax to be imposed, shall provide the tax rate or the maximum tax rate, shall specify the period during which the tax will be imposed, and shall specify the purposes for which the revenue derived from the tax will be used. The tax rate or the maximum tax rate shall be either ½ percent or 1 percent.

The proposition shall include an appropriations limit for that entity pursuant to Section 4 of Article XIII B of the California Constitution.

180203. (a) The county shall conduct the special election called by the board of supervisors pursuant to Section 180201. If the measure is approved, the authority shall reimburse the county for its cost in conducting the special election.

(b) The special election shall be called and conducted in the same manner as provided by law for the conduct of special elections by a county.

(c) The sample ballot to be mailed to the voters, pursuant to Section 10010 of the Elections Code, shall be the full proposition, as set forth in the ordinance calling the election, and the voter information handbook shall include the entire adopted county transportation expenditure plan.

180204. (a) Any transactions and use tax ordinance adopted pursuant to this chapter shall be operative on the first day of the first calendar quarter commencing more than 120 days after adoption of the ordinance.

(b) Prior to the operative date of the ordinance, the authority shall contract with the State Board of Equalization to perform all functions incidental to the administration and operation of the ordinance.

180205. The revenues from the taxes imposed pursuant to this chapter may be allocated by the authority for the construction and improvement of state highways, the construction, maintenance, improvement, and operation of local streets, roads, and highways, and the construction, improvement, and operation of public transit systems.

180206. (a) A county transportation expenditure plan shall be prepared for the expenditure of the revenues expected to be derived from the tax imposed pursuant to this chapter, together with other federal, state, and local funds expected to be available for transportation improvements, for the period during which the tax is to be imposed.

(b) A county transportation expenditure plan shall not be adopted until it has received the approval of the board of supervisors and of the city councils representing both a majority of the cities in the county and a majority of the population residing in the incorporated areas of the county.

(c) The plan shall be adopted prior to the call of the election provided for in Section 180201.

180207. (a) The authority may annually review and propose amendments to the county transportation expenditure plan adopted pursuant to Section 180206 to provide for the use of additional federal, state, and local funds, to account for unexpected revenues, or to take into consideration unforeseen circumstances.

(b) The authority shall notify the board of supervisors and the city council of each city in the county and provide them with a copy of the proposed amendments.

(c) The proposed amendments shall become effective 45 days after notice is given.

CHAPTER 6. BONDS

180250. (a) As part of the ballot proposition to approve the imposition of a retail transactions and use tax, authorization may be sought to issue bonds to finance capital outlay expenditures as may be provided for in the adopted county transportation expenditure plan, payable from the proceeds of the tax.

(b) The maximum bonded indebtedness which may be outstanding at any one time shall be an amount equal to the sum of the principal of, and interest on, the bonds, but not to exceed the estimated proceeds of the tax, as determined by the plan. The amount of bonds outstanding at any one time does not include the amount of bonds, refunding bonds, or bond anticipation notes for which funds necessary for the payment thereof have been set aside for that purpose in a trust or escrow account.

180251. (a) The bonds authorized by the voters concurrently with the approval of the retail transactions and use tax may be issued at any time by the authority and shall be payable from the proceeds of the tax. The bonds shall be referred to as "limited tax bonds." The bonds may be secured by a pledge of revenues from the proceeds of the tax.

(b) The pledge of the tax to the limited tax bonds authorized under this chapter shall have priority over the use of any of the tax for "pay-as-you-go" financing, except to the extent that that priority is expressly restricted in the resolution authorizing the issuance of the bonds.

180252. Limited tax bonds shall be issued pursuant to a resolution adopted at any time by a two-thirds vote of the authority. Each resolution shall provide for the issuance of bonds in the amounts as may be necessary, until the full amount of bonds authorized have been issued. The full amount of bonds may be divided into two or more series and different dates of payment fixed for the bonds of each series. A bond need not mature on its anniversary date.

180253. (a) A resolution authorizing the issuance of bonds shall state all of the following:

(1) The purposes for which the proposed debt is to be incurred, which may include all costs and estimated costs incidental to, or connected with, the accomplishment of those purposes, including, without limitation, engineering, inspection, legal, fiscal agents, financial consultant and other fees, bond and other reserve funds, working capital, bond interest estimated to accrue during the construction period and for a period not to exceed three years thereafter, and expenses of all proceedings for the authorization, issuance, and sale of the bonds.

(2) The estimated cost of accomplishing those purposes.

(3) The amount of the principal of the indebtedness.

(4) The maximum term the bonds proposed to be issued shall run before maturity, which shall not be beyond the date of termination of the imposition of the retail transactions and use tax.

(5) The maximum rate of interest to be paid, which shall not exceed the maximum allowable by law.

(6) The denomination or denominations of the bonds, which shall not be less than five thousand dollars ($5,000).

(7) The form of the bonds, including, without limitation, registered bonds and coupon bonds, to the extent permitted by federal law, and the form of any coupons to be attached thereto, the registration, conversion, and exchange privileges, if any, pertaining thereto, and the time when all of, or any part of, the principal becomes due and payable.

(b) The resolution may also contain any other matters authorized by this chapter or any other law.

180254. The bonds shall bear interest at a rate or rates not exceeding the maximum allowable by law, payable at intervals determined by the commission.

180255. In the resolution authorizing the issuance of the bonds, the authority may also provide for the call and redemption of the bonds prior to maturity at the times and prices and upon other terms as specified. However, no bond is subject to call or redemption prior to maturity, unless it contains a recital to that effect or unless a statement to that effect is printed.

180256. The principal of, and interest on, the bonds shall be payable in lawful money of the United States at the office of the treasurer of the authority, or at other places as may be designated, or at both the office and other places at the option of the holders of the bonds.

180257. The bonds, or each series thereof, shall be dated and numbered consecutively and shall be signed by the chairperson or vice chairperson of the authority and the auditor-controller of the authority, and the official seal, if any, of the authority shall be attached.

The interest coupons of the bonds shall be signed by the auditor-controller of the authority. All of the signatures and seal may be printed, lithographed, or mechanically reproduced.

If any officer whose signature appears on the bonds or coupons ceases to be that officer before the delivery of the bonds, the officer's signature is as effective as if the officer had remained in office.

180258. The bonds may be sold as the authority determines by resolution, and the bonds may be sold at a price below par, whether by negotiated or public sale.

180259. Delivery of any bonds may be made at any place either inside or outside the state, and the purchase price may be received in cash or bank credits.

180260. All accrued interest and premiums received on the sale of the bonds shall be placed in the fund to be used for the payment of the principal of, and interest on, the bonds, and the remainder of

the proceeds of the bonds shall be placed in the treasury of the authority and applied to secure the bonds or for the purposes for which the debt was incurred. However, when the purposes have been accomplished, any money remaining shall be either (a) transferred to the fund to be used for the payment of principal of, and interest on, the bonds or (b) placed in a fund to be used for the purchase of the outstanding bonds in the open market at prices and in the manner, either at public or private sale or otherwise, as determined by the authority. Bonds so purchased shall be canceled immediately.

180261. (a) The authority may provide for the issuance, sale, or exchange of refunding bonds to redeem or retire any bonds issued by the authority upon the terms, at the times and in the manner which it determines.

(b) Refunding bonds may be issued in a principal amount sufficient to pay all, or any part of, the principal of the outstanding bonds, the premiums, if any, due upon call and redemption thereof prior to maturity, all expenses of the refunding, and either of the following:

(1) The interest upon the refunding bonds from the date of sale thereof to the date of payment of the bonds to be refunded out of the proceeds of the sale of the refunding bonds or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(2) The interest upon the bonds to be refunded from the date of sale of the refunding bonds to the date of payment of the bonds to be refunded or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holder of the bonds.

(c) The provisions of this chapter for the issuance and sale of bonds apply to the issuance and sale of refunding bonds.

180262. (a) The authority may borrow money in anticipation of the sale of bonds which have been authorized pursuant to this chapter, but which have not been sold or delivered, and may issue negotiable bond anticipation notes therefor and may renew the bond anticipation notes from time to time. However, the maximum maturity of any bond anticipation notes, including the renewals thereof, shall not exceed five years from the date of delivery of the original bond anticipation notes.

(b) The bond anticipation notes, and the interest thereon, may be paid from any money of the authority available therefor, including the revenues from the tax. If not previously otherwise paid, the bond anticipation notes, or any portion thereof, or the interest thereon, shall be paid from the proceeds of the next sale of the bonds of the agency in anticipation of which the notes were issued.

(c) The bond anticipation notes shall not be issued in any amount in excess of the aggregate amount of the bonds which the authority has been authorized to issue, less the amount of any bonds of the authorized issue previously sold, and also less the amount of other bond anticipation notes therefor issued and then outstanding. The

bond anticipation notes shall be issued and sold in the same manner as the bonds.

(d) The bond anticipation notes and the resolutions authorizing them may contain any provisions, conditions, or limitations which a resolution of the authority may contain.

180263. Any bonds issued under this chapter are legal investment for all trust funds; for the funds of insurance companies, commercial and savings banks, and trust companies; and for state school funds; and whenever any money or funds may, by any law now or hereafter enacted, be invested in bonds of cities, counties, school districts, or other districts within the state, that money or funds may be invested in the bonds issued under this chapter, and whenever bonds of cities, counties, school districts, or other districts within the state may, by any law now or hereafter enacted, be used as security for the performance of any act or the deposit of any public money, the bonds issued under this chapter may be so used. The provisions of this chapter are in addition to all other laws relating to legal investments and shall be controlling as the latest expression of the Legislature with respect thereto.

180264. Any action or proceedings wherein the validity of the adoption of the retail transactions and use tax ordinance provided for in this chapter or the issuance of any bonds thereunder or any of the proceedings in relation thereto is contested, questioned, or denied, shall be commenced within six months from the date of the election at which the ordinance is approved; otherwise, the bonds and all proceedings in relation thereto, including the adoption and approval of the ordinance, shall be held to be valid and in every respect legal and incontestable.

SEC. 2. Section 7251.1 is added to the Revenue and Taxation Code, to read:

7251.1. The combined rate of all taxes imposed pursuant to this part in any county shall not exceed 1 percent. No tax shall be considered in accordance with this part if, upon its adoption, the combined rate will exceed 1 percent.

SEC. 3. Section 7252.16 is added to the Revenue and Taxation Code, to read:

7252.16. "Districts," as used in this part, also means a local transportation authority created, or designated to serve as a local transportation authority, pursuant to Division 19 (commencing with Section 180000) of the Public Utilities Code.

SEC. 4. Section 7273.2 is added to the Revenue and Taxation Code, to read:

7273.2. The board shall annually prepare a report showing the amount of both reimbursed and unreimbursed costs incurred by it in administering transactions and use taxes imposed by districts pursuant to this part.

CHAPTER 787

An act to amend Sections 18147, 18320, 18510, and 18521.5 of, and to add Sections 18003.5 and 18521.6 to, the Financial Code, relating to industrial loan companies.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 18003.5 of the Financial Code is amended to read:

18003.5. "Insured company" means a thrift and loan company licensed by the commissioner under this division, the investment certificates of which are insured by the Federal Deposit Insurance Corporation under applicable federal law.

SEC. 2. Section 18147 of the Financial Code is amended to read:

18147. The commissioner shall not approve an application for a branch office until the commissioner has ascertained to the commissioner's satisfaction that the facts set forth in the application are true and:

(a) That the public convenience and advantage will be promoted by the establishment of the proposed branch office.

(b) That the industrial loan company has the capital required by this division.

(c) That the industrial loan company has established branch operational controls.

(d) That the financial condition of the industrial loan company justifies the establishment of the proposed branch office.

(e) (1) As to an industrial loan company transacting business before October 1, 1985, that the industrial loan company is a member of the Federal Deposit Insurance Corporation, or (2) as to an industrial loan company commencing business on or after October 1, 1985, that the industrial loan company is a member of the Federal Deposit Insurance Corporation.

SEC. 3. Section 18320 of the Financial Code is amended to read:

18320. Notwithstanding Section 18319, an industrial loan company shall in no event:

(a) Have outstanding at any time during its first 12 months of operation as an industrial loan company under this division, its investment certificates (exclusive of those hypothecated with the company issuing them) in an aggregate sum in excess of six times the aggregate amount of its paid-up and unimpaired capital and unimpaired surplus not available for dividends pursuant to Section 18319.

(b) After 12 months of operation as an industrial loan company under this division and during the next 12 months of operation the industrial loan company may file an application with the

commissioner seeking authority to increase the aggregate sum of its investment certificates which (exclusive of those investment certificates hypothecated with the company issuing them) in no event shall exceed eight times the aggregate amount of its paid-up and unimpaired capital and unimpaired surplus not available for dividends pursuant to Section 18319.

(c) After 24 months of operation as an industrial loan company under this division and during the next 24 months of operation the company may file an application with the commissioner seeking authority to increase the aggregate sum of its investment certificates which (exclusive of those investment certificates hypothecated with the company issuing them) in no event shall exceed 12 times the aggregate amount of its paid-up and unimpaired capital and unimpaired surplus not available for dividends pursuant to Section 18319.

(d) If after 36 months of operation as an industrial loan company under this division the outstanding investment certificates of a company are insured by the Federal Deposit Insurance Corporation, the company may file an application with the commissioner seeking authority to increase the aggregate sum of its investment certificates which it may have outstanding to the extent authorized by the capital-adequacy requirements of the federal Deposit Insurance Corporation. An industrial loan company that is authorized to increase the aggregate sum of its investment certificates to the extent authorized by the capital-adequacy requirements of the Federal Deposit Insurance Corporation also shall meet the requirements of subdivisions (e) and (f).

(e) After 48 months of operation as an industrial loan company under this division and during the next 12 months of operation the company may file an application with the commissioner seeking authority to increase the aggregate sum of its investment certificates which, exclusive of those investment certificates hypothecated with the company issuing them, in no event shall exceed 15 times the aggregate amount of its paid-up and unimpaired capital and unimpaired surplus not available for dividends pursuant to Section 18319, only if both of the following requirements are met:

(1) A company shall maintain a liquidity reserve in cash, or cash equivalent, equal to 1½ percent of its total investment certificates outstanding. "Cash equivalent" means investments legal for commercial banks under the laws of this state, with a maturity of not more than 12 months.

(2) In addition to the reserve for losses required by the commissioner pursuant to Section 18343, a company shall establish and maintain such special reserves for losses as the commissioner, by rule or order, may require.

(f) After 60 months of operation as an industrial loan company under this division, the company may file an application with the commissioner seeking authority to increase the aggregate sum of its investment certificates which it may have outstanding, which,

exclusive of those investment certificates hypothecated with the company issuing them, in no event shall exceed 20 times the aggregate amount of its paid-up and unimpaired capital and unimpaired surplus not available for dividends pursuant to Section 18319, and which may exceed 15 times the amount of its paid-up and unimpaired capital and unimpaired surplus not available for dividends pursuant to Section 18319 only if the requirements of subdivision (e) are met and the capital stock is not less than one million two hundred fifty thousand dollars ($1,250,000) and the unimpaired paid-in surplus is not less than seven hundred fifty thousand dollars ($750,000).

(g) Whenever the commissioner deems it reasonable and necessary or advisable for the protection of the public (including the fact that an industrial loan company is not a member of the Federal Deposit Insurance Corporation), the commissioner may at any time by order authorize said industrial loan company to have its investment certificates outstanding in either a lesser aggregate sum than the maximum aggregate amounts permitted by subdivision (a), (b), (c), (d), (e), or (f), or none at all.

(h) The request for authority filed with the commissioner pursuant to subdivisions (b), (c), (d), (e), and (f) shall be set forth in an application in such form and containing such information as the commissioner may require.

(i) The commissioner shall by rule or regulation set forth the criteria that must be met before an industrial loan company can be granted authority to increase the aggregate sum of its outstanding investment certificates.

(j) If the commissioner does not within 60 days of the filing of an application grant a request by an industrial loan company operating under this division, for authority to increase the aggregate sum of its outstanding investment certificates to the requested amount, or issues an order pursuant to subdivision (g), the company may file with the commissioner its written request for hearing in accordance with subdivisions (c) and (d) of Section 18315.

SEC. 4. Section 18510 of the Financial Code is amended to read:

18510. The Board of Directors of Guaranty Corporation shall be composed of 11 members, four of which shall be public members; and commencing in 1989, seven members, two of which shall be public members; and commencing in 1990, and thereafter, five members, one of which shall be a public member. Public members shall be appointed by the board and shall not be affiliated with any company or affiliate of any company. Public members shall not be a relative of any officer or director of any company or its affiliates.

SEC. 5. Section 18521.5 of the Financial Code is amended to read:

18521.5. (a) Notwithstanding Section 18521 or 18100.5, until July 1, 1990, each industrial loan company, other than a premium finance agency, which has issued and has outstanding thrift obligations shall, as a condition of its authority to continue to conduct business under this division, have its outstanding thrift obligations insured or

guaranteed by Thrift Guaranty Corporation, or participate as a member of the Federal Deposit Insurance Corporation; however, each industrial loan company shall, as a condition of its authority to continue to conduct business under this division, continue to participate as a member or a special member as defined in Section 18476, in Thrift Guaranty Corporation in accordance with this chapter and rules established by the Board of Directors of Thrift Guaranty Corporation until it has paid assessments required by Section 18537.

(b) On and after July 1, 1990, each industrial loan company, other than a premium finance agency, which has issued and has outstanding thrift obligations, shall, as a condition of its authority to continue to conduct business under this division, participate as a member of the Federal Deposit Insurance Corporation.

(c) Any person not transacting the business of an industrial loan company prior to the effective date of this section, who thereafter commences business under the provisions of this division, shall, upon commencement of its business, participate as a member of the Federal Deposit Insurance Corporation.

(d) Thrift Guaranty Corporation shall have the power to seek insurance, guarantee, or surety, with an insurer or surety, or guarantor authorized to transact business in this state. The insurance shall be subject to the approval of the commissioner after consultation with the Insurance Commissioner. It is the intent of the Legislature to permit Thrift Guaranty Corporation to seek insurance and Thrift Guaranty Corporation's insurer to seek reinsurance. Thrift Guaranty Corporation shall remain in existence after July 1, 1990, to assist in the winding up, liquidation, or merger of industrial loan companies unable to comply with the requirements of subdivision (b) by that date. Thrift Guaranty Corporation shall continue to guarantee outstanding thrift obligations sold and issued prior to July 1, 1990, by an industrial loan company which has not complied with the requirements of subdivision (b) by July 1, 1990, until all outstanding thrift obligations have been redeemed by the issuer, a successor to the issuer in compliance with the requirements of subdivision (b), or Thrift Guaranty Corporation.

(e) In addition to any other provision of this section, if during that period of time ending July 1, 1990, the United States Congress or the Board of Governors of the Federal Reserve System adopt or amend a law or regulations which pertain to an industrial loan company applying for and obtaining membership in the Federal Deposit Insurance Corporation, and the new federal law or regulations prevent an industrial loan company from obtaining Federal Deposit Insurance Corporation coverage solely because the company's holding company status prevents Federal Deposit Insurance Corporation membership, a successor to the Thrift Guaranty Corporation approved by the commissioner, or some other institutional mechanism approved by the commissioner, which obtains insurance in accordance with this subdivision, may continue

to discharge its function so long as the insurance remains in effect.

(f) Within one year of the effective date of the act which adds this section, and annually thereafter until July 1, 1990, the commissioner shall report to the Legislature on the following:

(1) The progress of Thrift Guaranty Corporation in obtaining reinsurance.

(2) The progress of licensees in converting to coverage by an instrumentality of the United States government or by a private insurer, surety, or guarantor.

(3) Recommendations for additional legislation if, in the commissioner's opinion, additional legislation would be desirable to encourage industrial loan companies to seek coverage for investment certificates from sources other than Thrift Guaranty Corporation.

The commissioner shall submit special reports on these matters as may be required by the circumstances.

SEC. 6. Section 18521.6 is added to the Financial Code, to read:

18521.6. No industrial loan company which fails to comply with the requirements of subdivision (b) of Section 18521.5 by June 30, 1990, may continue to sell and issue investment certificates beyond that date.

SEC. 7. Sections 1 and 2 of this act shall become operative January 1, 1989.

CHAPTER 788

An act to add Article 1.3 (commencing with Section 1205) to Chapter 1 of Part 2 of Division 2 of the Water Code, relating to water rights.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Article 1.3 (commencing with Section 1205) is added to Chapter 1 of Part 2 of Division 2 of the Water Code, to read:

Article 1.3. Declaration of Fully Appropriated Stream System

1205. (a) Following notice and hearing, the board may adopt a declaration that a stream system is fully appropriated. As used in this article, "stream system" includes stream, lake, or other body of water, and tributaries and contributory sources, but does not include an underground water supply other than a subterranean stream following through known and definite channels.

(b) A declaration that a stream system is fully appropriated shall contain a finding that the supply of water in the stream system is being fully applied to beneficial uses where the board finds that

previous water rights decisions have determined that no water remains available for appropriation.

(c) Upon its own motion or upon petition of any interested person, and following notice and hearing, the board may revoke or revise a declaration that a stream system is fully appropriated.

1206. (a) From and after the date of adoption of a declaration that a stream system is fully appropriated, and subject to subdivision (b), the board shall not accept for filing any application for a permit to appropriate water from the stream system described in that declaration, and the board may cancel any application pending on that date.

(b) Notwithstanding subdivision (a), the board may provide, in any declaration that a stream system is fully appropriated, for acceptance for filing of applications to appropriate water under specified conditions. Any provision to that effect shall specify the conditions and may contain application limitations, including, but not limited to, limitations on the purpose of use, on the instantaneous rate of diversion, on the season of diversion, and on the amount of water which may be diverted annually. The board may make those limitations applicable to individual applications to appropriate water, or to the aggregate of the applications, or to both.

(c) Subdivision (a) shall not apply to applications for temporary permits made pursuant to Chapter 6.5 (commencing with Section 1425) or to any provision of this code respecting change in point of diversion, place of use, or purpose of use.

1207. Notice of hearing pursuant to this article shall be given as follows:

(a) The notice shall be published at least once a week for four consecutive weeks in one or more newspapers of general circulation published in each county in which any part of the stream system is situated, and publication shall be complete at least 60 days prior to the date of hearing.

(b) At least 60 days prior to the date of the hearing, the notice shall be mailed to all persons known to the board who own land that appears to be riparian to the stream system, who divert water from the stream system, or who have made written request to the board for special notice of hearing pursuant to this article.

CHAPTER 789

An act to amend Sections 17310, 17320, 17321, 17323, and 17336 of, and repeal Section 17320.1 of, the Financial Code, relating to escrow agents.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 17310 of the Financial Code is amended to read:

17310. (a) It shall be the purpose of Fidelity Corporation to indemnify a member against loss of trust obligations as a result of fraud or dishonesty by an officer, director, trustee, stockholder, manager, or employee of a member, subject to the limitations set forth in this chapter.

(b) Fidelity Corporation shall not be liable for any consequential damages sustained by a member, or by any other person, nor for any punitive damages whatsoever.

(c) The indemnification shall be provided by either:

(1) A fidelity fund established by Fidelity Corporation.

(2) A bond to be approved by the commissioner.

(3) A combination of the fidelity fund and the bond.

SEC. 2. Section 17320 of the Financial Code is amended to read:

17320. Fidelity Corporation shall establish and maintain a fidelity fund as follows:

(a) Upon organization and establishment of the Fidelity Corporation, each member shall pay to Fidelity Corporation a membership fee of two thousand two hundred fifty dollars ($2,250) for each member's licensed location. The membership fee shall be paid in three annual installments of seven hundred fifty dollars ($750) each on or before April 15 of each year.

(b) Each person licensed pursuant to this division who becomes a member subsequent to the organization and establishment of Fidelity Corporation shall pay to Fidelity Corporation a membership fee of two thousand two hundred fifty dollars ($2,250) for each member's licensed location. The first installment of the membership fee of seven hundred fifty dollars ($750) shall also be paid to Fidelity Corporation prior to the time the license is issued by the commissioner for each location. The second and third installments of the membership fee of seven hundred fifty dollars ($750) each shall be paid on or before May 15 of the first and second year, respectively, subsequent to the year in which the license is issued. Fidelity Corporation shall not deny membership to any escrow agent holding a valid unrevoked license under the Escrow Law. Each person licensed pursuant to this division who becomes a member on or after January 1, 1986, shall pay the membership fee in one installment at

the time of applying for membership.

(c) A member who is granted authority by the commissioner to establish additional licensed locations shall pay to Fidelity Corporation, at the same time the authority is granted by the commissioner, the first installment of the membership fee for each licensed location. The second and third installments of the membership fee of seven hundred fifty dollars ($750) shall be paid on or before May 15 of the first and second years, respectively, subsequent to the year in which the authority is granted by the commissioner. Each person who is granted authority by the commissioner to establish additional licensed locations on or after January 1, 1986, shall pay the membership fee in one installment at the time the authority is granted.

(d) For the purpose of the annual assessment of each member to maintain the fidelity fund, Fidelity Corporation shall establish a fidelity fund account for each member, which shall require a cash payment from each member equal to the greater of the membership fee for each licensed location or 1 percent of the member's monthly average trust obligations as reported to the commissioner pursuant to Section 17348.

For those licensed persons who became members before January 1, 1986, if, on May 15 of the fourth year of membership and thereafter, the member's fidelity fund account does not equal the greater of the membership fee for each licensed location or 1 percent of the member's monthly average trust obligations, then Fidelity Corporation shall assess the member as follows:

(1) First, the remaining annual installments on the membership fee as set forth above.

(2) Then, after the membership fee is paid in full, an amount based on the member's average monthly trust obligations as follows:

(A) One-half of 1 percent of the average monthly trust obligations up to five hundred thousand dollars ($500,000) plus

(B) One-fourth of 1 percent of the average monthly trust obligations from five hundred thousand one dollars ($500,001) to one million dollars ($1,000,000) plus

(C) One-eighth of 1 percent of the average monthly trust obligations in excess of one million dollars ($1,000,000).

For those licensed persons who become members on or after January 1, 1986, if the member's fidelity fund account does not equal the greater of the membership fee for each licensed location or 1 percent of the member's monthly average trust obligations on May 15 of the first year subsequent to the year in which the license is issued, and thereafter, Fidelity Corporation shall assess the member as set forth in paragraph (2) of subdivision (d).

Provided, however, in no event will a member be required to pay an annual assessment greater than one thousand dollars ($1,000) per licensed location.

(e) Each member that fails to file a schedule of its escrow liability pursuant to Section 17348 when due shall pay an annual assessment

of one thousand dollars ($1,000) per licensed location unless an extension of time is granted in writing by the commissioner. Failure to file the schedule of escrow liability on or before the date granted by the extension of time shall result in an annual assessment of one thousand dollars ($1,000) per licensed location.

(f) Whenever Fidelity Corporation is requested by a member to pay that member for loss of trust obligations as a result of fraud or dishonesty, Fidelity Corporation shall pay its liability from the fidelity fund under Section 17314 by first charging the requesting member's fidelity fund account and then, to the extent that the member's fidelity fund account is insufficient to satisfy the claim, Fidelity Corporation shall charge the fidelity fund accounts of all members by an amount determined by the following formula: an amount resulting from multiplying the balance of the claim by a number, the numerator of which is a member's fidelity fund account and the denominator of which is the total of all members' fidelity fund accounts. Thereafter, Fidelity Corporation shall immediately assess the member filing the claim the amount charged to that member's fidelity fund account and immediately assess all members the amount charged to their fidelity fund accounts, if any, as provided for in Section 17321.

(g) In the event the amount in the fidelity fund equals 2 percent or more of the total average trust obligations for all members as reflected in the most recent report required by Section 17348, Fidelity Corporation may credit to each member an amount in the fidelity fund in excess of 1½ percent of the total trust obligations of all members. The amount which may be credited to each member shall be an amount equal to the ratio of the member's fidelity fund account to the total amount of all members' fidelity fund accounts. If a member has not paid any assessment or has not paid the full amount of any assessment or a membership fee, the amount to be credited shall first be applied to pay the member's unpaid assessment or membership fee liability.

(h) The membership fee may be considered a tangible asset of the member in all financial statements.

(i) Whenever any member has surrendered its license to engage in business as an escrow agent (and the commissioner has accepted the surrender of the license), and the member has disbursed its trust obligations in accordance with the requirements of the Escrow Law and escrow instructions, a member may request Fidelity Corporation to refund to the member the balance of its fidelity fund account. The member's fidelity fund account shall be refunded in accordance with Fidelity Corporation's bylaws. However, no refund shall be made to any member sooner than 24 months and one day from the date of acceptance of surrender of the license y the commissioner.

SEC. 3. Section 17320.1 of the Financial Code is repealed.

SEC. 4. Section 17321 of the Financial Code is amended to read:

17321. Fidelity Corporation shall send a written notice of assessment to each member assessed within 30 days after the levy of

any assessment. Amounts assessed shall be paid to Fidelity Corporation by each member assessed not later than 60 days following written notice of assessment.

In the event that Fidelity Corporation has extraordinary expenses or claims paid from the fidelity fund during any fiscal year which reduces the fidelity fund by 25 percent or more and the reduction would result in the fidelity fund being less than 1 percent of the total trust obligations of all members, Fidelity Corporation shall immediately levy an assessment on each member to replenish the fidelity fund by an amount charged to each member's account pursuant to the method set forth in Section 17339; provided, the assessment limitation of one thousand dollars ($1,000) per year per location shall not apply.

SEC. 5. Section 17323 of the Financial Code is amended to read:

17323. (a) In the event any member fails to pay an assessment when due, Fidelity Corporation shall by written demand addressed to the member request the payment of the assessment within 30 days of the demand letter. If the member fails to pay an assessment, the commissioner may issue an order pursuant to subdivision (b).

(b) If a member fails to pay the assessment, the commissioner may by order summarily suspend the certificate issued to the company. If after the order is made, a request for a hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is suspended, a company shall not conduct business pursuant to this division, except as may be permitted by order of the commissioner. However, the suspension of a certificate shall not affect the powers of the commissioner as provided in this division.

SEC. 6. Section 17336 of the Financial Code is amended to read:

17336. (a) Fidelity Corporation shall have independent authority to investigate claims filed by members pursuant to Section 17330.

(b) Fidelity Corporation, with the written consent of the commissioner, may conduct an examination or investigation of the business practices of a member's handling and processing of trust obligations. The result of any investigation shall be reported to the commissioner together with the recommendations of the Board of Directors of Fidelity Corporation.

(c) Fidelity Corporation may submit reports and make recommendations to a member on its findings as a result of an examination or investigation conducted pursuant to this section. These reports and recommendations shall not be public documents. A copy of all reports and recommendations shall be furnished to the commissioner by Fidelity Corporation. There shall be no liability on the part of, and no cause of action of any nature shall arise against, Fidelity Corporation or its members, directors, officers, employees, stockholders, or agents or the commissioner or commissioner's authorized representatives for any statements made by them in any reports or recommendations made hereunder.

(d) Fidelity Corporation, upon the request of the commissioner, may participate in an examination or investigation of the books and records of a member. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the commissioner, or members of the commissioner's staff or the commissioner's authorized representative for the release of any information furnished to Fidelity Corporation pursuant to this subdivision.

(e) With the written consent of a majority of its directors and the commissioner, Fidelity Corporation, in order to fulfill its obligations under this section, may appoint an independent certified public accountant or public accountant or hire or appoint a specialized committee or employees to conduct an examination or investigation authorized by this section. Any reports as a result thereof shall be furnished to the commissioner pursuant to the provisions of subdivision (c).

(f) For the purposes of conducting an examination or investigation, Fidelity Corporation or its appointee shall have free access to the offices and places of business, books, accounts, papers, records, files, safes and vaults of the member.

(g) Costs and expenses for the examination or investigation shall be paid by Fidelity Corporation.

(h) Fidelity Corporation, any member of Fidelity Corporation, an agent of Fidelity Corporation or of its members, or any person who uses any information obtained under this section for any purpose not authorized herein is guilty of a misdemeanor.

CHAPTER 790

An act to amend Sections 18206, 18211, and 18437 of the Financial Code, relating to industrial loan companies.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 18206 of the Financial Code is amended to read:

18206. An industrial loan company shall not make a consumer loan or acquire a consumer obligation other than a loan or obligation secured by a motor vehicle unless the loan or obligation is repayable by equal or substantially equal periodic payments during its term. Consumer loans made and obligations acquired which are secured by a motor vehicle and repayable other than in equal periodic payments during its term shall not exceed 50 percent of all consumer loans and obligations which are secured by motor vehicles or 20 percent of assets, whichever is less. This section shall not apply to a loan made

to a graduate student while attending an accredited college or university and for the purpose of actively pursuing a study program leading to a postbaccalaureate degree.

SEC. 2. Section 18211 of the Financial Code is amended to read:

18211. No charge shall be collected unless a loan is made, except that an industrial loan company may charge, contract for, and receive a fee in connection with making a written commitment to make a loan, secured by real property having a face amount in excess of five thousand dollars ($5,000) whether or not the loan is consummated, or in connection with the purchase, sale, or origination of a lease as lessor and may charge, contract for, and receive an application fee for a loan having an original principal balance in excess of five thousand dollars ($5,000) or for a lease which payments are in excess of five thousand dollars ($5,000), provided, however, that a disclosure statement setting forth the amount of the fee, which may be reviewed by the commissioner as to form and content, shall be provided to each person to whom an application fee is charged. The commitment fee or the loan application fee with respect to a consumer loan shall be limited to the actual expenses incurred.

SEC. 3. Section 18437 of the Financial Code is amended to read:

18437. (a) Except as provided in subdivision (b), an industrial loan company shall not make loans to, or purchase any obligations from, persons who do not reside or have a place of business in the State of California, unless those loans or obligations comply with all of the following conditions:

(1) If the loan or obligation is unsecured, then only if the loan or obligation bears the unqualified written guaranty of a financially responsible person, considering the amount of the obligation, who resides or has a place of business in the State of California.

(2) If the documents and security for the loan or obligation and all records relating to the transaction are in California at the time the loan or obligation is made or acquired and are thereafter kept in California while the loan or obligation remains unsatisfied, except that where the security is aircraft, the security need not be in California at the time the loan or obligation is made or acquired, nor need it thereafter be held in California while the loan or obligation remains unsatisfied.

(b) Notwithstanding subdivision (a), an industrial loan company may make loans to, or purchase any obligations from, persons who do not reside or have a place of business in the State of California not to exceed 20 percent, in the aggregate, of a company's total assets.

CHAPTER 791

An act to add Sections 11895 and 13000 to, and to add Chapter 9 (commencing with Section 12251) to Division 6 of, the Food and Agricultural Code, relating to pesticides.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 11895 is added to the Food and Agricultural Code, to read:

11895. An action brought pursuant to this article shall be commenced by the director, the Attorney General, the district attorney, the city prosecutor, or the city attorney, as the case may be, within two years of the occurrence of the violation. However, when an investigation is completed and submitted to the director, the action shall be commenced within one year of that submission.

SEC. 2. Chapter 9 (commencing with Section 12251) is added to Division 6 of the Food and Agricultural Code, to read:

CHAPTER 9. PESTICIDE DEALER DESIGNATED AGENT

12251. No person shall act as a designated agent of a pesticide dealer who is licensed pursuant to Chapter 7 (commencing with Section 12101), unless that person is licensed as a pesticide dealer designated agent pursuant to this article.

12252. (a) Application for a pesticide dealer designated agent license shall be in the form prescribed by the director. Each application shall state the name and address of the applicant and shall be accompanied by a fee of fifteen dollars ($15). These fees shall be paid into the State Treasury to the credit of the Department of Food and Agriculture Fund.

(b) All licenses issued pursuant to this article shall expire on December 31 of the year for which they are issued.

(c) Licenses may be renewed annually upon application in the form prescribed by the director and upon payment of a fee of fifteen dollars ($15). A penalty of ten dollars ($10) shall be added to any license renewal fee which is not paid by the date of expiration of the previously issued license.

12253. Before an initial license is issued, the applicant shall pass an examination to demonstrate to the director the applicant's knowledge of the laws and regulations governing the use and sale of pesticides and the responsibility in carrying on the business of a pesticide dealer.

12254. The director shall issue to each applicant who satisfies the requirements of this chapter a pesticide dealer designated agent license.

12255. Every licensed pesticide dealer designated agent who changes his or her address shall immediately notify the director of the new address.

12256. The director may adopt rules and regulations that are reasonably necessary to effectuate this chapter.

12257. The director may, after a hearing, refuse, revoke, or suspend a pesticide dealer designated agent license for violation of this chapter or Division 7 (commencing with Section 12501). The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code.

12258. It is unlawful for any person who is subject to this chapter to do any of the following:

(a) Fail to notify the director of any change of address.

(b) Fail to comply with this division or Division 7 (commencing with Section 12501) relating to pesticides or the rules and regulations adopted pursuant to those provisions.

(c) Make false or fraudulent statements, or misrepresent or fail to disclose any material fact in making an application for a license or renewal of a license.

(d) Make any false or misleading statements in any written record or report relating to pesticides or involving the pesticide dealer business where that person is, or was, employed.

SEC. 3. Section 13000 is added to the Food and Agricultural Code, to read:

13000. An action brought pursuant to this article shall be commenced by the director, the commissioner, the Attorney General, the district attorney, the city prosecutor, or the city attorney, as the case may be, within two years of the occurrence of the violation. However, when an investigation is completed and submitted to the director, the action shall be commenced within one year of that submission.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 792

An act to amend Section 597.5 of the Penal Code, relating to crimes.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 597.5 of the Penal Code is amended to read:

597.5. (a) Any person who does any of the following is guilty of a felony and is punishable by imprisonment in a state prison for 16 months, or two or three years, or by a fine not to exceed fifty thousand dollars ($50,000), or by both such fine and imprisonment:

(1) Owns, possesses, keeps, or trains any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog.

(2) For amusement or gain, causes any dog to fight with another dog, or causes any dogs to injure each other.

(3) Permits any act in violation of paragraph (1) or (2) to be done on any premises under his or her charge or control, or aids or abets that act.

(b) Any person who is knowingly present, as a spectator, at any place, building, or tenement where preparations are being made for an exhibition of the fighting of dogs, with the intent to be present at those preparations, or is knowingly present at that exhibition or at any other fighting or injuring as described in paragraph (2) of subdivision (a), with the intent to be present at that exhibition, fighting, or injuring, is guilty of a misdemeanor.

(c) Nothing in this section shall prohibit any of the following:

(1) The use of dogs in the management of livestock, as defined by Section 14205 of the Food and Agricultural Code, by the owner of the livestock or his or her employees or agents or other persons in lawful custody thereof.

(2) The use of dogs in hunting as permitted by the Fish and Game Code, including, but not limited to, Sections 3286, 3509, 3510, 4002, and 4756, and by the rules and regulations of the Fish and Game Commission.

(3) The training of dogs or the use of equipment in the training of dogs for any purpose not prohibited by law.

CHAPTER 793

An act to amend Sections 46695, 46696, 46786, and 46788 of, to add Sections 46788.1, 46788.2, and 46788.3 to, and to repeal Section 46787 of, the Water Code, relating to water storage districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 46695 of the Water Code is amended to read:

46695. Upon making any order fixing and calling an installment or amount, the secretary shall also enter in the minutes of the board, and certify to each county treasurer for signature and mailing or publication in the affected counties, a notice in substantially the following form:

(Name) water storage district. (Location of the principal place of business.) Notice is hereby given that at a meeting of the board of directors held on _____ an installment of _____ percent of assessment number _____ was ordered paid within 60 days from the date thereof to the respective county treasurers of the counties wherein lands of such district are situate. Any installment which shall remain unpaid on the (day fixed) will be delinquent, together with the accrued interest thereon, with 10 percent of such installment and interest added as penalty.

For any installment which remains unpaid after the date it becomes delinquent, the following procedure shall apply:

(a) Unless the assessments, penalties, and interest delinquent are paid by the date stated in a notice of sale, the delinquent property shall, on that date, be sold to the highest bidder for nonpayment of the delinquent assessments, penalties, and interest.

(b) Subsequent to the sale of the delinquent property to the highest bidder, the property may be redeemed by payment of the amount specified in Section 46786 of the Water Code and, if applicable, Section 46788.3 of the Water Code.

(c) The name, address, and telephone number of the official who will furnish all information concerning redemption is _____.

(d) After three years have elapsed from the date of sale of the delinquent property to the highest bidder, the right of redemption may be terminated upon execution and delivery to the district of a deed pursuant to Article 6 (commencing with Section 46785) of Chapter 5 of Part 9 of Division 14 of the Water Code.

(Signed) _____

Treasurer of _____ County.

SEC. 2. Section 46696 of the Water Code is amended to read:

46696. The notice shall be sent through the mail, addressed to each holder of title to land at the address shown on the county assessment roll, together with a statement showing the amount due for the applicable parcel or parcels. The notice shall also be published once a week for two consecutive weeks in each affected county.

SEC. 3. Section 46786 of the Water Code is amended to read:

46786. The redemptioner shall pay to the county treasurer the amount for which the property was sold, interest on the sum at the rate of 9 percent per year from the date of the sale (but not less than three-fourths of 1 percent for any portion of a month), recorder's fees in recording the certificate of sale and certificate of redemption, and costs of publication required by Section 46730. The amount shall be credited to the proper fund of the district or paid to the person holding the certificate of sale to the property sought to be redeemed.

SEC. 4. Section 46787 of the Water Code is repealed.

SEC. 5. Section 46788 of the Water Code is amended to read:

46788. If no redemption is made within three years from the date of sale, the purchaser or the district, if the property shall have been sold to the district, or the assignees or transferees of the district, shall be entitled to a deed executed by the county treasurer even though the district may be in the process of dissolution or may have already been dissolved, after having made demand upon the county treasurer as required by Section 46788.1 and after the county treasurer has given the notice required by Section 46788.1. The right of redemption shall terminate upon recording of the deed to the property.

SEC. 6. Section 46788.1 is added to the Water Code, to read:

46788.1. After receiving a demand for a deed pursuant to Section 46788, and not less than 45 days nor more than 60 days before delivery of a deed pursuant to that demand, the county treasurer shall publish once a week for two consecutive weeks in each affected county a notice which shall contain all of the following:

(a) The date of the notice.

(b) A statement that as of a stated date, three years or more will have elapsed since the property or properties described in the notice were sold pursuant to this chapter.

(c) A statement that on the stated date, the purchaser demanded delivery of a deed to the property.

(d) A statement that unless sooner redeemed, a deed to the property will be delivered to the purchaser.

(e) The date and time at which the deed will be executed and delivered.

(f) A statement that if the deed is executed and delivered, the right of redemption will terminate.

(g) The name, address, and telephone number of the official who will furnish all information concerning redemption.

(h) The fiscal year or years for which the delinquent assessments were levied.

(i) A description of the property.

(j) The amount required to redeem, which shall include the amount specified in Section 46788.3.

(k) The name of the assessee on the current assessment book of the district.

SEC. 7. Section 46788.2 is added to the Water Code, to read:

46788.2. After the first publication of the notice required by Section 46788.1, and not less than 45 days nor more than 60 days before the date specified in that notice for the delivery of a deed, the county treasurer, or the district, if it was the purchaser, shall send by certified mail to each of the parties of interest, as specified in this section, at his or her last known address, a copy of the notice published pursuant to Section 46788.1. The county treasurer, or the district, if it was the purchaser, shall make a reasonable effort to ascertain the names and addresses of each of the parties of interest. For the purposes of this section, a "party of interest" is the holder of any interest in the delinquent property which would be terminated by execution and delivery of a deed.

SEC. 8. Section 46788.3 is added to the Water Code, to read:

46788.3. Upon first publication of the notice required by Section 46788.1, there shall be added to the amount to redeem as provided in Section 46786 the sum of the following:

(a) The cost of publication of the notice required by Section 46788.1.

(b) The cost of ascertaining the parties of interest, including the cost of any title reports.

SEC. 9. Any deed which has been delivered to a purchaser pursuant to Article 6 (commencing with Section 46785) of Chapter 5 of Part 9 of Division 14 of the Water Code prior to the operative date of this act shall be fully effective. However, a deed delivered to the district as purchaser prior to the operative date of this act for which the affected property has not been sold and conveyed by the district by that date, shall be canceled on that date. Any property affected by a canceled deed shall simultaneously become subject to redemption until a new deed has been executed and delivered to the district pursuant to the procedures prescribed in this act.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

SEC. 11. 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 avoid jeopardizing the receipt of delinquent assessments by water storage districts and to provide for the effective

administration of the laws relating to delinquent property at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 794

An act to repeal the Hunters Point Reclamation District Act (Chapter 1573 of the Statutes of 1955), relating to the Hunters Point Reclamation District.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Notwithstanding any other provision of law, on or after January 1, 1988, the Hunters Point Reclamation District shall be dissolved, disincorporated, and extinguished, its existence shall be terminated, and all of its corporate powers shall cease.

SEC. 2. The City and County of San Francisco shall be the successor to the Hunters Point Reclamation District and shall exercise the powers vested in a successor pursuant to Chapter 6 (commencing with Section 57450) of Part 5 of Division 3 of Title 5 of the Government Code.

SEC. 3. The Hunters Point Reclamation District Act (Chapter 1573 of the Statutes of 1955) is repealed.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 795

An act to add Section 13831.5 to the Health and Safety Code, relating to fire districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 13831.5 is added to the Health and Safety Code, to read:

13831.5. Notwithstanding Section 13831 of the Health and Safety Code, when any fire protection districts in San Diego County or

Santa Cruz County are consolidated during the period up to and including one year after the effective date of this section, the board of directors shall be composed of five, seven, or nine members as determined by, and appointed from, the members of the boards of directors of the former fire protection districts. Of the members first appointed to the board of directors, five members in the case of a nine member board, four members in the case of a seven member board, or three members in the case of a five member board, shall serve terms of four years and the balance of the members shall serve terms of two years. The determination of which members shall serve two- or four-year terms shall be made by lot at the first meeting of the board. Thereafter, members shall be elected in conformity with this part.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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.

SEC. 3. The Legislature finds and declares that the consolidation of fire protection districts in San Diego County and in Santa Cruz County presents circumstances not common to all fire protection districts, and therefore, a general law cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution, and that enactment of this act as a special law is necessary.

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 preserve the continuity of fire protection services in view of pending consolidations of fire protection districts in San Diego County and in Santa Cruz County it is necessary that this act take effect immediately.

CHAPTER 796

An act to amend Section 80.6 of the Harbors and Navigation Code, to amend Section 735 of the Public Resources Code, and to amend Sections 157 and 8552 of the Water Code, relating to resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 80.6 of the Harbors and Navigation Code is amended to read:

80.6. Members of the commission may receive a salary for their

services in an amount of one hundred dollars ($100) for each day, up to a maximum of 14 days per year. A member of the commission may also be reimbursed for the actual and necessary expenses which are incurred in the performance of the member's duties.

SEC. 2. Section 735 of the Public Resources Code is amended to read:

735. Each member of the board shall receive compensation for each day during which the member engaged in the performance of official duties, except that the total number of days for which a member, other than the chairperson, may be compensated shall not exceed 80 days in any one fiscal year. The chairperson of the board may receive compensation for not more than 100 days in any one fiscal year. In addition to the compensation, each member shall be reimbursed for necessary traveling and other expenses incurred in the performance of official duties.

SEC. 3. Section 157 of the Water Code is amended to read:

157. Each member of the California Water Commission shall receive one hundred dollars ($100) for each day during which the member is engaged in the performance of official duties, but shall not be compensated for more than 40 days in any one fiscal year, except that the chairperson of the commission may be compensated for up to 60 days for performance of those duties. In addition to that compensation, each member shall be reimbursed for necessary traveling and other expenses incurred in the performance of official duties.

SEC. 4. Section 8552 of the Water Code is amended to read:

8552. Each member of the board shall receive the necessary expenses incurred by the member in the performance of official duties, and each member of the board that is neither eligible for nor receives any salary or other compensation for time spent attending meetings of the board shall receive one hundred dollars ($100) for each day attending the meetings of the board, except that no member shall be compensated for more than 40 days in any one fiscal year.

In addition to the amounts above provided, any member of the board traveling outside the state pursuant to authorization of the board, and the approval of the Governor and Director of Finance as provided by Section 11032 of the Government Code, while so engaged shall receive that per diem and necessary expenses.

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 prevent curtailment of the California Water Commission's ability to act on resolutions of necessity for eminent domain proceedings of the Department of Water Resources, to prevent curtailment of the Reclamation Board's ability to issue permits and regulate floodway encroachments and to perform important flood control functions, to ensure that the regulatory

functions of the State Board of Forestry proceed without interruption, and to ensure that the functions of the Boating and Waterways Commission proceed without interruption, it is necessary that this act take effect immediately.

CHAPTER 797

An act to amend Section 69763 of, and to add Sections 69509, 69509.5, and 94313 to, the Education Code, relating to student financial aid, and making an appropriation therefor.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 69509 is added to the Education Code, to read:

69509. (a) Upon the commencement of any cause of action, including an emergency action, by the commission against an educational institution in connection with the California Educational Loan Program or other state student financial aid program, the director of the commission may order that all or any part of state financial aid funds scheduled to be delivered to that institution by the commission, whether payable to that institution or its students, be withheld from the institution and deposited in a separate state account. However, in order to alleviate the financial hardships imposed upon students by withholding the delivery of state financial aid funds to an educational institution, the director of the commission may, at any time after the initial withholding, release state financial aid funds to these students, giving first priority to the release of funds for subsistence payments.

(b) The director shall give notice to the institution and affected students of any action taken pursuant to subdivision (a).

(c) The director, upon the termination of any action taken pursuant to subdivision (a), shall order the disposition of the withheld funds in a manner consistent with the outcome of the cause of action and in the best interest of the affected students. The director may order that the funds be withheld from an institution permanently, in which case those funds shall be returned to the state fund or account from which it originated, for subsequent use by the commission.

(d) "Cause of action" and "emergency action," for the purposes of this section, mean those actions described in Sections 30302 and 30304 of Title 5 of the California Administrative Code, and as those sections may subsequently be amended, concerning the limitation, suspension, and termination of eligibility under the California Guaranteed Student Loan Program and the California Loans to

Assist Students Program.

SEC. 2. Section 69509.5 is added to the Education Code, to read:

69509.5. (a) Within five days of the commencement of any cause of action, including an emergency action, by the commission against a private postsecondary educational institution in connection with the California Guaranteed Student Loan Program or the California Loans to Assist Students Program, the director of the commission shall give notice, in writing, of the commencement of the action to the Private Postsecondary Education Division of the State Department of Education.

(b) "Cause of action" and "emergency action," for the purposes of this section, mean those actions described in Sections 30302 and 30304 of Title 5 of the California Administrative Code, and as those sections may subsequently be amended, concerning the limitation, suspension, and termination of eligibility under the California Guaranteed Student Loan Program and the California Loans to Assist Students Program.

SEC. 3. Section 69763 of the Education Code is amended to read:

69763. (a) The commission shall administer the guaranteed loan program established pursuant to this chapter. The commission is hereby vested with authority to enter into any contract with the United States Secretary of Education or any other federal officer or agency under Title IV of the Higher Education Act of 1965, any extension thereof, or any similar act of Congress, and is hereby vested with all other necessary power and authority to cooperate with the government of the United States, or any agency or agencies thereof, in administration of the act of Congress and the rules and regulations adopted thereunder. The commission shall adopt any rules and regulations it deems necessary for the proper administration of this chapter.

(b) The rules and regulations adopted by the commission pursuant to this section shall include a provision authorizing the commission to impose a civil penalty in an amount not to exceed twenty-five thousand dollars ($25,000) per violation against any financial or educational institution that violates any applicable law, rule, regulation, limitation, consent agreement, or school or lender agreement, relative to a state financial aid program. The rules and regulations adopted pursuant to this section shall provide all of the following:

(1) No civil penalty shall be imposed against an institution without first affording that institution an opportunity to request a hearing and if a request for a hearing is made, a hearing shall be held before a representative of the commission.

(2) No civil penalty shall be imposed against an institution unless an action against that institution has been initiated pursuant to Section 30302 or 30304 of Title 5 of the California Administrative Code.

(c) Any moneys derived from the assessment of penalties pursuant to this section shall be deposited into the State Guaranteed

Loan Reserve Fund.

SEC. 4. Section 94313 is added to the Education Code, to read:

94313. (a) Within 30 days of receiving the notice described in Section 69509.5 from the commission, the Private Postsecondary Education Division of the State Department of Education shall commence an investigation of the institution named in the notice. The purpose of the investigation shall be to determine whether the educational institution is complying with the applicable provisions of the chapter, the rules and regulations promulgated pursuant to this chapter, and the standards established by the accrediting board or agency. The receipt of the notice described in Section 69509.5 shall be deemed to be substantial evidence of violation of the standards established by the responsible agency for the purposes of subdivision (*l*) of Section 94312.

(b) Within 60 days of the commencement of the investigation required in subdivision (a), the Private Postsecondary Education Division of the State Department of Education shall conclude its investigation and take action against the institution involved, as appropriate.

CHAPTER 798

An act to add Section 798 to the Public Utilities Code, relating to the Public Utilities Commission.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. It is the intent of the Legislature, in enacting Section 798 of the Public Utilities Code, that the Public Utilities Commission be authorized to impose civil penalties on any electrical, gas, or telephone corporation which, in violation of Section 798, willfully engages in cross-subsidization of diversification ventures at the expense of its ratepayers.

SEC. 2. Section 798 is added to the Public Utilities Code, to read:

798. (a) Whenever the commission finds and determines that any electrical, gas, or telephone corporation has willfully made an imprudent payment to, or received a less than reasonable payment from, any subsidiary or affiliate of, or corporation holding a controlling interest in, the electrical, gas, or telephone corporation in violation of any rule or order of the commission, adopted and published by the commission prior to the transaction but after notice to, and an opportunity to comment by, the affected corporation, and the corporation has sought to recover the payment in any proceeding before the commission, the commission may , following a hearing, levy a penalty against the corporation not to exceed three

times the required or prohibited payment, as the case may be, if the commission finds that the payment, in whole or part, was made or received by the corporation for the purpose of benefiting its subsidiary, affiliate, or holding corporation. This penalty is in addition to any criminal penalties which may apply.

(b) In determining whether to impose a civil penalty under this section, the commission may take into consideration multistate public utility diversification activities involving cross-subsidization which are permissible in other states or under federal jurisdiction although in violation of the commission's rules and orders.

CHAPTER 799

An act to amend Section 66499.30 of, and to repeal and add Section 66499.31 of, the Government Code, relating to subdivisions.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 66499.30 of the Government Code is amended to read:

66499.30. (a) No person shall sell, lease, or finance any parcel or parcels of real property or commence construction of any building for sale, lease or financing thereon, except for model homes, or allow occupancy thereof, for which a final map is required by this division or local ordinance, until the final map thereof in full compliance with this division and any local ordinance has been filed for record by the recorder of the county in which any portion of the subdivision is located.

(b) No person shall sell, lease or finance any parcel or parcels of real property or commence construction of any building for sale, lease or financing thereon, except for model homes, or allow occupancy thereof, for which a parcel map is required by this division or local ordinance, until the parcel map thereof in full compliance with this division and any local ordinance has been filed for record by the recorder of the county in which any portion of the subdivision is located.

(c) Conveyances of any part of a division of real property for which a final or parcel map is required by this division or local ordinance shall not be made by parcel or block number, initial or other designation, unless and until the final or parcel map has been filed for record by the recorder of the county in which any portion of the subdivision is located.

(d) Subdivisions (a), (b), and (c) do not apply to any parcel or parcels of a subdivision offered for sale or lease, contracted for sale or lease, or sold or leased in compliance with or exempt from any law

(including a local ordinance), regulating the design and improvement of subdivisions in effect at the time the subdivision was established.

(e) Nothing contained in subdivisions (a) and (b) shall be deemed to prohibit an offer or contract to sell, lease, or finance real property or to construct improvements thereon where the sale, lease, or financing, or the commencement of construction, is expressly conditioned upon the approval and filing of a final subdivision map or parcel map, as required under this division.

(f) Nothing in subdivisions (a) to (e), inclusive, shall in any way modify or affect Section 11018.2 of the Business and Professions Code.

(g) For purposes of this section, the limitation period for commencing an action, either civil or criminal, against the subdivider or an owner of record at the time of a violation of this division or of a local ordinance enacted pursuant to this division, shall be tolled for any time period during which there is no constructive notice of the transaction constituting the violation, because the owner of record, at the time of the violation or at any time thereafter, failed to record a deed, lease, or financing document with the county recorder.

SEC. 2. Section 66499.31 of the Government Code is repealed.

SEC. 3. Section 66499.31 is added to the Government Code, to read:

66499.31. Each violation of this division by a person who is the subdivider or an owner of record, at the time of the violation, of property involved in the violation shall be punishable by imprisonment in the county jail not exceeding one year or in the state prison, by a fine not exceeding ten thousand dollars ($10,000), or by both that fine and imprisonment. Every other violation of this division is a misdemeanor.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 800

An act to amend Sections 661, 677, 11580.1, and 11580.2 of the Insurance Code, relating to insurance.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 661 of the Insurance Code is amended to read:

661. (a) A notice of cancellation of a policy shall be effective only if it is based on one or more of the following reasons:

(1) Nonpayment of premium.

(2) The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

(3) Discovery of fraud by the named insured in pursuing a claim under the policy provided the insurer does not rescind the policy.

(b) This section shall not apply to any policy or coverage which has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(c) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars ($100) shall not be deemed a cancellation of the coverage or of the policy.

(d) This section shall not apply to nonrenewal.

SEC. 2. Section 677 of the Insurance Code is amended to read:

677. All notices of cancellation shall be in writing, mailed to the named insured at the address shown in the policy, or to his or her last known address, and shall state, with respect to policies in effect after the time limits specified in Section 676, (a) which of the grounds set forth in Section 676 is relied upon, and (b) that, upon written request of the named insured, mailed or delivered to the insurer within 15 days of the date of cancellation, the insurer shall specify the reason for the cancellation except where the reason is for nonpayment of premium and is so stated in the cancellation notice.

SEC. 3. Section 11580.1 of the Insurance Code is amended to read:

11580.1. (a) No policy of automobile liability insurance described in Section 16054 of the Vehicle Code covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be issued or delivered in this state on or after the effective date of this section unless it contains the provisions set forth in subdivision (b). However, none of the requirements of subdivision (b) shall apply to the insurance afforded under any such policy (1)

to the extent that such insurance exceeds the limits specified in subdivision (a) of Section 16056 of the Vehicle Code, or (2) if such policy contains an underlying insurance requirement, or provides for a retained limit of self-insurance, equal to or greater than the limits specified in subdivision (a) of Section 16056 of the Vehicle Code.

(b) Every policy of automobile liability insurance to which subdivision (a) applies shall contain all of the following provisions:

(1) Coverage limits not less than the limits specified in subdivision (a) of Section 16056 of the Vehicle Code.

(2) Designation by explicit description of, or appropriate reference to, the motor vehicles or class of motor vehicles to which coverage is specifically granted.

(3) Designation by explicit description of the purposes for which coverage for such motor vehicles is specifically excluded.

(4) Provision affording insurance to the named insured with respect to any motor vehicle covered by such policy, and to the same extent that insurance is afforded to the named insured, to any other person using, or legally responsible for the use of, such motor vehicle, provided such use is by the named insured or with his or her permission, express or implied, and within the scope of such permission, except that: (i) with regard to insurance afforded for the loading or unloading of any such motor vehicle, the insurance may be limited to apply only to the named insured, a relative of the named insured who is a resident of the named insured's household, a lessee or bailee of the motor vehicle, or an employee of any such person; and (ii) the insurance afforded to any person other than the named insured need not apply to: (A) any employee with respect to bodily injury sustained by a fellow employee injured in the scope and course of his or her employment, or (B) any person, or to any agent or employee thereof, employed or otherwise engaged in the business of selling, repairing, servicing, delivering, testing, road-testing, parking, or storing automobiles with respect to any accident arising out of the maintenance or use of a motor vehicle in connection therewith.

(c) In addition to any exclusion as provided in paragraph (3) of subdivision (b), the insurance afforded by any such policy of automobile liability insurance to which subdivision (a) applies, including the insurer's obligation to defend, may, by appropriate policy provision, be made inapplicable to any or all of the following:

(1) Liability assumed by the insured under contract.

(2) Liability for bodily injury or property damage caused intentionally by or at the direction of the insured.

(3) Liability imposed upon or assumed by the insured under any workers' compensation law.

(4) Liability for bodily injury to any employee of the insured arising out of and in the course of his employment.

(5) Liability for bodily injury to an insured or liability for bodily injury to an insured whenever the ultimate benefits of that indemnification accrue directly or indirectly to an insured.

(6) Liability for damage to property owned, rented to, transported by, or in the charge of, an insured. A motor vehicle operated by an insured shall be considered to be property in the charge of an insured.

(7) Liability for any bodily injury or property damage with respect to which insurance is or can be afforded under a nuclear energy liability policy.

(8) Any motor vehicle or class of motor vehicles, as described or designated in the policy, with respect to which coverage is explicitly excluded, in whole or in part.

The term "the insured" as used in paragraphs (1), (2), (3), and (4) shall mean only that insured under the policy against whom the particular claim is made or suit brought. The term "an insured" as used in paragraphs (5) and (6) shall mean any insured under the policy including those persons who would have otherwise been included within the policy's definition of an insured but, by agreement, are subject to the limitations of paragraph (1) of subdivision (d).

(d) Notwithstanding the provisions of paragraph (4) of subdivision (b), or the provisions of Article 2 (commencing with Section 16450) of Chapter 3 of Division 7, or Article 2 (commencing with Section 17150) of Chapter 1 of Division 9, of the Vehicle Code, the insurer and any named insured may, by the terms of any policy of automobile liability insurance to which subdivision (a) applies, or by a separate writing relating thereto, agree as to either or both of the following limitations, such agreement to be binding upon every insured to whom such policy applies and upon every third party claimant:

(1) That coverage and the insurer's obligation to defend under such policy shall not apply nor accrue to the benefit of any insured or any third party claimant while any motor vehicle is being used or operated by a natural person or persons designated by name. These limitations shall apply to any use or operation of a motor vehicle including the negligent or alleged negligent entrustment of a motor vehicle to such designated person or persons. The insurer shall have an obligation to defend the named insured when all of the following apply to such designated natural person:

1. He or she is a resident of the same household as the named insured.

2. As a result of operating the insured motor vehicle of the named insured, he or she is jointly sued with the named insured.

3. He or she is an insured under a separate automobile liability insurance policy issued to him or her as a named insured, which policy does not provide a defense to the named insured.

An agreement made by the insurer and any named insured more than 60 days following the inception of the policy excluding a designated person by name shall be effective from the date of the agreement and shall, with the signature of a named insured, be conclusive evidence of the validity of the agreement.

Such agreement shall remain in force as long as the policy remains in force, and shall apply to any continuation, renewal, or replacement of such policy by the named insured, or reinstatement of such policy within 30 days of any lapse thereof.

(2) That with regard to any such policy issued to a named insured engaged in the business of leasing vehicles for those vehicles which are leased for a term in excess of six months, or selling, repairing, servicing, delivering, testing, road-testing, parking, or storing automobiles, coverage shall not apply to any person other than the named insured or his or her agent or employee, except to the extent that the limits of liability of any other valid and collectible insurance available to such person are not equal to the limits of liability specified in subdivision (a) of Section 16056 of the Vehicle Code. If the policy is issued to a named insured engaged in the business of leasing vehicles, which business includes the lease of vehicles for a term in excess of six months, and the lessor includes in the lease automobile liability insurance, the terms and limits of which are not otherwise specified in the lease, the named insured shall incorporate a provision in each vehicle lease contract advising the lessee of the provisions of this subdivision and the fact that this limitation is applicable except as otherwise provided for by statute or federal law.

(e) Nothing in this section or in Section 16054 or 16450 of the Vehicle Code shall be construed to constitute a homeowner's policy, personal and residence liability policy, personal and farm liability policy, general liability policy, comprehensive personal liability policy, manufacturers' and contractors' policy, premises liability policy, special multiperil policy, or any policy or endorsement where automobile liability coverage is offered as incidental to some other basic coverage as an "automobile liability policy" within the meaning of Section 16054 of the Vehicle Code, or as a "motor vehicle liability policy" within the meaning of Section 16450 of the Vehicle Code, nor shall any provision of this section apply to a policy which provides insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle in the Republic of Mexico issued or delivered in this state by a nonadmitted Mexican insurer, notwithstanding that any such policy may provide automobile or motor vehicle liability coverage on insured premises or the ways immediately adjoining.

(f) On and after January 1, 1976, no policy of automobile liability insurance described in subdivision (a) shall be issued, amended, or renewed in this state if it contains any provision which expressly or impliedly excludes from coverage under such policy the operation or use of an insured motor vehicle by the named insured in the performance of volunteer services for a nonprofit charitable organization or governmental agency by providing social service transportation. This subdivision shall not apply in any case in which the named insured receives any remuneration of any kind other than reimbursement for actual mileage driven in the performance of such services at a rate not to exceed the following:

(1) For the 1980–81 fiscal year, the maximum rate authorized by the State Board of Control, which shall also be known as the "base rate."

(2) For each fiscal year thereafter, the greater of either (A) the maximum rate authorized by the State Board of Control or (B) the base rate as adjusted by the California Consumer Price Index.

No policy of insurance issued under this section may be canceled by an insurer solely for the reason that the named insured is performing volunteer services for a nonprofit charitable organization or governmental agency consisting of providing social service transportation.

For the purposes of this section, "social service transportation" means transportation services provided by private nonprofit organizations or individuals to either individuals who are senior citizens or individuals or groups of individuals who have special transportation needs because of physical or mental conditions and supported in whole or in part by funding from private or public agencies.

(g) Notwithstanding the provisions of paragraph (4) of subdivision (b) of this section, or the provisions of Article 2 (commencing with Section 16450) of Chapter 3 of Division 7 of, or Article 2 (commencing with Section 17150) of Chapter 1 of Division 9 of, the Vehicle Code, a Mexican nonadmitted insurer and any named insured may, by the terms of any policy of automobile insurance for use solely in the Republic of Mexico to which subdivision (a) applies, or by a separate writing relating thereto, agree to the limitation that coverage under such policy shall not apply to any person riding in or occupying a vehicle owned by the insured or driven by another person with the permission of the insured. Such agreement shall be binding upon every insured to whom any such policy applies and upon any third party claimant.

(h) No policy of automobile insurance which provides insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle solely in the Republic of Mexico issued by a nonadmitted Mexican insurance company, shall be subject to, or provide coverage for, those coverages provided in Section 11580.2.

SEC. 4. Section 11580.2 of the Insurance Code is amended to read:

11580.2. (a) (1) No policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle, except for policies which provide insurance in the Republic of Mexico issued or delivered in this state by nonadmitted Mexican insurers, shall be issued or delivered in this state to the owner or operator of a motor vehicle, or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle then principally used or principally garaged in this state, unless the policy contains, or has added to it by endorsement, a provision with coverage limits at least equal to the limits specified in subdivision (m) and in no case less than the financial responsibility

requirements specified in Section 16056 of the Vehicle Code insuring the insured, the insured's heirs or legal representative for all sums within such limits which he, she, or they, as the case may be, shall be legally entitled to recover as damages for bodily injury or wrongful death from the owner or operator of an uninsured motor vehicle. The insurer and any named insured, prior to or subsequent to the issuance or renewal of a policy, may, by agreement in writing, in the form specified in paragraph (2), delete the provision covering damage caused by an uninsured motor vehicle (1) completely, or (2) delete such coverage when a motor vehicle is operated by a natural person or persons designated by name, or agree to provide such coverage in an amount less than that required by subdivision (m) but not less than the financial responsibility requirements specified in Section 16056 of the Vehicle Code. Any such agreements by any named insured or agreement for the amount of coverage shall be binding upon every insured to whom the policy or endorsement provisions apply while the policy is in force, and shall continue to be so binding with respect to any continuation or renewal of the policy or with respect to any other policy which extends, changes, supersedes, or replaces the policy issued to the named insured by the same insurer, or with respect to reinstatement of the policy within 30 days of any lapse thereof. A policy shall be excluded from the application of this section if the only coverage with respect to the use of any motor vehicle is limited to the contingent liability arising out of the use of nonowned motor vehicles or if the automobile liability coverage is provided only on an excess or umbrella basis. Nothing in this section shall be construed to require that uninsured motorist coverage shall be offered or provided in any homeowner policy, personal and residents' liability policy, comprehensive personal liability policy, manufacturers' and contractors' policy, premises liability policy, special multiperil policy, or any other policy or endorsement where automobile liability coverage is offered as incidental to some other basic coverage, notwithstanding that the policy may provide automobile or motor vehicle liability coverage on insured premises or the ways immediately adjoining.

(2) The agreement specified in paragraph (1) shall be in the following form:

"The California Insurance Code requires an insurer to provide uninsured motorists coverage in each bodily injury liability insurance policy it issues covering liability arising out of the ownership, maintenance, or use of a motor vehicle. Such section also permits the insurer and the applicant to delete such coverage completely or to delete such coverage when a motor vehicle is operated by a natural person or persons designated by name, or agree to provide such coverage in an amount less than that required by subdivision (m) of Section 11580.2 of the Insurance Code, but not less than the financial responsibility requirements. Uninsured motorists coverage insures the insured, his or her heirs, or legal representatives for all sums within the limits established by law, which such person or persons are

legally entitled to recover as damages for bodily injury, including any resulting sickness, disease, or death, to him or her from the owner or operator of an uninsured motor vehicle not owned or operated by the insured or a resident of the same household. An uninsured motor vehicle includes an underinsured motor vehicle as defined in subdivision (p) of Section 11580.2 of the Insurance Code."

The agreement may contain additional statements not in derogation of or in conflict with the foregoing. The execution of the agreement shall relieve the insurer of liability under this section while the agreement remains in effect.

(b) As used in (a) above, "bodily injury" includes sickness or disease, including death, resulting therefrom; the term "named insured" means only the individual or organization named in the declarations of the policy of motor vehicle bodily injury liability insurance referred to in (a) above; as used in (a) above if the named insured is an individual the term "insured" means the named insured and the spouse of the named insured and, while residents of the same household, relatives of either while occupants of a motor vehicle or otherwise, heirs and any other person while in or upon or entering into or alighting from an insured motor vehicle and any person with respect to damages he or she is entitled to recover for care or loss of services because of bodily injury to which the policy provisions or endorsement apply; as used in (a) above, if the named insured is an entity other than an individual, the term "insured" means any person while in or upon or entering into or alighting from an insured motor vehicle and any person with respect to damages he or she is entitled to recover for care or loss of services because of bodily injury to which the policy provisions or endorsement apply. As used in this subdivision, the word "individual" shall not include persons doing business as corporations, partnerships, or associations. The term "insured motor vehicle" means the motor vehicle described in the underlying insurance policy of which the uninsured motorist endorsement or coverage is a part, a temporary substitute automobile for which liability coverage is provided in the policy or a newly acquired automobile for which liability coverage is provided in the policy if the motor vehicle is used by the named insured or with his or her permission or consent, express or implied, and any other automobile not owned by or furnished for the regular use of the named insured or any resident of the same household, or by a natural person or persons for whom coverage has been deleted in accordance with subdivision (a) while being operated by the named insured or his or her spouse if a resident of the same household, but the term "insured motor vehicle" shall not include any automobile while used as a public or livery conveyance. As used in this section, the term "uninsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance or use of which there is no bodily injury liability insurance or bond applicable at the time of the accident, or there is such applicable insurance or bond but the company writing the same denies coverage thereunder or refuses to

admit coverage thereunder except conditionally or with reservation, or an "underinsured motor vehicle" as defined in subdivision (p), or a motor vehicle used without the permission of the owner thereof if there is no bodily injury liability insurance or bond applicable at the time of the accident with respect to the owner or operator thereof, or the owner or operator thereof be unknown, provided that, with respect to an "uninsured motor vehicle" whose owner or operator is unknown:

(1) The bodily injury has arisen out of physical contact of the automobile with the insured or with an automobile which the insured is occupying.

(2) The insured or someone on his or her behalf shall have reported the accident within 24 hours to the police department of the city where the accident occurred or, if the accident occurred in unincorporated territory then either the sheriff of the county where the accident occurred or the local headquarters of the California Highway Patrol, and have filed with the insurer within 30 days thereafter a statement under oath that the insured or his or her legal representative has or the insured's heirs have a cause of action arising out of the accident for damages against a person or persons whose identity is unascertainable and set forth facts in support thereof. As used in this section, the term "uninsured motor vehicle" shall not include a motor vehicle owned or operated by the named insured or any resident of the same household or self-insured within the meaning of the Financial Responsibility Law of the state in which the motor vehicle is registered or which is owned by the United States of America, Canada, a state or political subdivision of any such government or an agency of any of the foregoing, or a land motor vehicle or trailer while located for use as a residence or premises and not as a vehicle, or any equipment or vehicle designed or modified for use primarily off public roads, except while actually upon public roads.

As used in this section, the term "uninsured motor vehicle" also means an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency. An insurer's solvency protection shall be applicable only to accidents occurring during a policy period in which its insured's motor vehicle coverage is in effect where the liability insurer of the tortfeasor becomes insolvent within one year of the accident. In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making the payment, shall to the extent thereof, be entitled to any proceeds which may be recoverable from the assets of the insolvent insurer through any settlement or judgment of the person against the insolvent insurer.

Nothing in this section is intended to exclude from the definition of an uninsured motor vehicle any motorcycle or private passenger type four wheel drive motor vehicle if that vehicle was subject to and

failed to comply with the Financial Responsibility Law of this state.

(c) The insurance coverage provided for in this section does not apply either as primary or as excess coverage to:

(1) To property damage sustained by the insured.

(2) To bodily injury of the insured while in or upon or while entering into or alighting from a motor vehicle other than the described motor vehicle if the owner thereof has insurance similar to that provided in this section.

(3) To bodily injury of the insured with respect to which the insured or his or her representative shall, without the written consent of the insurer, make any settlement with or prosecute to judgment any action against any person who may be legally liable therefor.

(4) In any instance where it would inure directly or indirectly to the benefit of any workers' compensation carrier or to any person qualified as a self-insurer under any workers' compensation law, or directly to the benefit of the United States, or any state or any political subdivision thereof.

(5) To establish proof of financial responsibility as provided in subdivisions (a), (b), and (c) of Section 16054 of the Vehicle Code.

(6) To bodily injury of the insured while occupying a motor vehicle owned by an insured or leased to an insured under a written contract for a period of six months or longer, unless the occupied vehicle is an insured motor vehicle. "Motor vehicle" as used in this paragraph means any self-propelled vehicle.

(7) To bodily injury of the insured when struck by a vehicle owned by an insured.

(d) Subject to paragraph (2) of subdivision (c), the policy or endorsement may provide that if the insured has insurance available to the insured under more than one uninsured motorist coverage provision, any damages shall not be deemed to exceed the higher of the applicable limits of the respective coverages, and such damages shall be prorated between the applicable coverages as the limits of each coverage bear to the total of such limits.

(e) The policy or endorsement added thereto may provide that if the insured has valid and collectible automobile medical payment insurance available to him or her, the damages which the insured shall be entitled to recover from the owner or operator of an uninsured motor vehicle shall be reduced for purposes of uninsured motorist coverage by the amounts paid or due to be paid under the automobile medical payment insurance. This subdivision shall become operative on January 1, 1971.

(f) The policy or an endorsement added thereto shall provide that the determination as to whether the insured shall be legally entitled to recover damages, and if so entitled, the amount thereof, shall be made by agreement between the insured and the insurer or, in the event of disagreement, by arbitration. The arbitration shall be conducted by a single neutral arbitrator. An award or a judgment confirming an award shall not be conclusive on any party in any

action or proceeding between (i) the insured, his or her insurer, his or her legal representative, or his or her heirs and (ii) the uninsured motorist to recover damages arising out of the accident upon which the award is based. If the insured has or may have rights to benefits, other than nonoccupational disability benefits, under any workers' compensation law, the arbitrator shall not proceed with the arbitration until the insured's physical condition is stationary and ratable. In those cases in which the insured claims a permanent disability, the claims shall, unless good cause be shown, be adjudicated by award or settled by compromise and release before the arbitration may proceed. Any demand or petition for arbitration shall contain a declaration, under penalty of perjury, stating whether (i) the insured has a workers' compensation claim; (ii) the claim has proceeded to findings and award or settlement on all issues reasonably contemplated to be determined in that claim; and (iii) if not, what reasons amounting to good cause are grounds for the arbitration to proceed immediately. The arbitration shall be deemed to be a proceeding and the hearing before the arbitrator shall be deemed to be the trial of an issue therein for purposes of issuance of a subpoena by an attorney of a party to the arbitration under Section 1985 of the Code of Civil Procedure. The provisions of Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall be applicable to these determinations, and all rights, remedies, obligations, liabilities and procedures set forth in Article 3 shall be available to both the insured and the insurer at any time after the accident, both before and after the commencement of arbitration, if any, with the following limitations:

(1) Whenever in Article 3, reference is made to the court in which the action is pending, or provision is made for application to the court or obtaining leave of court or approval by the court, the court which shall have jurisdiction for the purposes of this section shall be the superior court of the State of California, in and for any county which is a proper county for the filing of a suit for bodily injury arising out of the accident, against the uninsured motorist, or any county specified in the policy or an endorsement added thereto as a proper county for arbitration or action thereon.

(2) Any such proper court to which application is first made by either the insured or the insurer under the provisions of Article 3 for any discovery or other relief or remedy, shall thereafter be the only court to which either of the parties shall make any applications under Article 3 with respect to the same accident, subject, however, to the right of the court to grant a change of venue after a hearing upon notice, upon any of the grounds upon which change of venue might be granted in an action filed in the superior court.

(3) A deposition pursuant to the provisions of Section 2016 of the Code of Civil Procedure may be taken without leave of court, except that leave of court, granted with or without notice and for good cause shown, must be obtained if the notice of the taking of the deposition

is served by either party within 20 days after the accident.

(4) The provisions of paragraph (4) of subdivision (a) of Section 2019 of the Code of Civil Procedure shall not be applicable to discovery under this section.

(5) For the purposes of discovery under this section, the insured and the insurer shall each be deemed to be "a party to the record of any civil action or proceedings," where that phrase is used in paragraph (2) of subdivision (b) of Section 2019 of the Code of Civil Procedure.

(6) Interrogatories under the provisions of Section 2030 of the Code of Civil Procedure and requests for admission under Section 2033 of the Code of Civil Procedure may be served by either the insured or the insurer upon the other at any time more than 20 days after the accident without leave of court.

(7) Nothing in this section shall be construed to limit the rights of any party to discovery in any action pending or which may hereafter be pending in any court.

(g) The insurer paying a claim under an uninsured motorist endorsement or coverage shall be entitled to be subrogated to the rights of the insured to whom such claim was paid against any person legally liable for such injury or death to the extent that payment was made. Such action may be brought within three years from the date that payment was made hereunder.

(h) An insured entitled to recovery under the uninsured motorist endorsement or coverage shall be reimbursed within the conditions stated herein without being required to sign any release or waiver of rights to which he or she may be entitled under any other insurance coverage applicable; nor shall payment under this section to such insured be delayed or made contingent upon the decisions as to liability or distribution of loss costs under other bodily injury liability insurance or any bond applicable to the accident. Any loss payable under the terms of the uninsured motorist endorsement or coverage to or for any person may be reduced:

(1) By the amount paid and the present value of all amounts payable to him or her, his or her executor, administrator, heirs, or legal representative under any workers' compensation law, exclusive of nonoccupational disability benefits.

(2) By the amount the insured is entitled to recover from any other person insured under the underlying liability insurance policy of which the uninsured motorist endorsement or coverage is a part, including any amounts tendered to the insured as advance payment on behalf of such other person by the insurer providing the underlying liability insurance.

(i) No cause of action shall accrue to the insured under any policy or endorsement provision issued pursuant to this section unless within one year from the date of the accident:

(1) Suit for bodily injury has been filed against the uninsured motorist, in a court of competent jurisdiction and notice of such suit has been given the insurer, or

(2) Agreement as to the amount due under the policy has been concluded, or

(3) The insured has formally instituted arbitration proceedings.

(j) Notwithstanding the provisions of subdivisions (b) and (i), in the event the accident occurs in any other state or foreign jurisdiction to which coverage is extended under the policy and the insurer of the tortfeasor becomes insolvent, any action authorized pursuant to the provisions of this section may be maintained within three months of the insolvency of the tortfeasor's insurer, but in no event later than the pertinent period of limitation of the jurisdiction in which the accident occurred.

(k) Notwithstanding the provisions of subdivision (i), any insurer whose insured has made a claim under his or her uninsured motorist coverage, and such claim is pending, shall, at least 30 days before the expiration of the applicable statute of limitation, notify its insured in writing of the statute of limitation applicable to the injury or death. Failure of the insurer to provide the written notice shall operate to toll any applicable statute of limitation or other time limitation for a period of 30 days from the date the written notice is actually given. The notice shall not be required if the insurer has received notice that the insured is represented by an attorney.

(*l*) As used in subdivision (b), "public or livery conveyance," or terms of similar import, shall not include the operation or use of a motor vehicle by the named insured in the performance of volunteer services for a nonprofit charitable organization or governmental agency by providing social service transportation as defined in subdivision (f) of Section 11580.1. This subdivision shall apply only to policies of insurance issued, amended, or renewed on or after January 1, 1976.

(m) Coverage provided under an uninsured motorist endorsement or coverage shall be offered with coverage limits equal to the limits of liability for bodily injury in the underlying policy of insurance, but shall not be required to be offered with limits in excess of the following amounts:

(1) A limit of thirty thousand dollars ($30,000) because of bodily injury to or death of one person in any one accident.

(2) Subject to the limit for one person set forth in paragraph (1), a limit of sixty thousand dollars ($60,000) because of bodily injury to or death of two or more persons in any one accident.

(n) Underinsured motorist coverage shall be offered with limits equal to the limits of liability for the insured's uninsured motorist limits in the underlying policy, and may be offered with limits in excess of such uninsured motorist coverage. For the purposes of this section, uninsured and underinsured motorist coverage shall be offered as a single coverage. However, an insurer may offer coverage for damages for bodily injury or wrongful death from the owner or operator of an underinsured motor vehicle at greater limits than an uninsured motor vehicle.

(o) If an insured has failed to provide an insurer with wage loss

information or medical treatment record releases within 15 days of the insurer's request or has failed to submit to a medical examination arranged by the insurer within 20 days of the insurer's request, the insurer may, at any time prior to 30 days before the actual arbitration proceedings commence, request, and the insured shall furnish, wage loss information or medical treatment record releases, and the insurer may require the insured, except during periods of hospitalization, to make himself or herself available for a medical examination. The wage loss information or medical treatment record releases shall be submitted by the insured within 10 days of request and the medical examination shall be arranged by the insurer no sooner than 10 days after request, unless the insured agrees to an earlier examination date, and not later than 20 days after the request. If the insured fails to comply with the requirements of this subdivision, the actual arbitration proceedings shall be stayed for at least 30 days following compliance by the insured. The proceedings shall be scheduled as soon as practicable following expiration of the 30-day period.

(p) This subdivision applies only when bodily injury, as defined in subdivision (b), is caused by an underinsured motor vehicle. If the provisions of this subdivision conflict with subdivisions (a) through (o), the provisions of this subdivision shall prevail.

(1) As used in this subdivision, "an insured motor vehicle" is one that is insured under a motor vehicle liability policy, or automobile liability insurance policy, self-insured, or for which a cash deposit or bond has been posted to satisfy a financial responsibility law.

(2) "Underinsured motor vehicle" means a motor vehicle that is an insured motor vehicle but insured for an amount that is less than the uninsured motorist limits carried on the motor vehicle of the injured person.

(3) This coverage does not apply to any bodily injury until the limits of bodily injury liability policies applicable to all insured motor vehicles causing the injury have been exhausted by payment of judgments or settlements, and proof of such is submitted to the insurer providing the underinsured motorist coverage.

(4) When bodily injury is caused by one or more motor vehicles, whether insured, underinsured, or uninsured, the maximum liability of the insurer providing the underinsured motorist coverage shall not exceed the insured's underinsured motorist coverage limits, less the amount paid to the insured by or for any person or organization that may be held legally liable for the injury.

(5) The insurer paying a claim under this subdivision shall, to the extent of such payment, be entitled to reimbursement or credit in the amount received by the insured from the owner or operator of the underinsured motor vehicle or the insurer of such owner or operator.

(6) If the insured brings an action against the owner or operator of an underinsured motor vehicle, he or she shall forthwith give to the insurer providing the underinsured motorist coverage a copy of

the complaint by personal service or certified mail. All pleadings and depositions shall be made available for copying or copies furnished the insurer, at the insurer's expense, within a reasonable time.

(7) Underinsured motorist coverage shall be included in all policies of bodily injury liability insurance providing uninsured motorist coverage issued or renewed on or after July 1, 1985. Notwithstanding this section, an agreement to delete uninsured motorist coverage completely, or with respect to a person or persons designated by name, executed prior to July 1, 1985, shall remain in full force and effect.

(q) Regardless of the number of vehicles involved whether insured or not, persons covered, claims made, premiums paid or the number of premiums shown on the policy, in no event shall the limit of liability for two or more motor vehicles or two or more policies be added together, combined, or stacked to determine the limit of insurance coverage available to injured persons.

CHAPTER 801

An act to amend Sections 212.5, 241.3, 243.3, and 245.2 of, and to add Section 481.1 to, the Penal Code, relating to crimes.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 212.5 of the Penal Code is amended to read:

212.5. (a) Every robbery of any person who is performing his or her duties as an operator of any bus, taxicab, cable car, streetcar, trackless trolley, or other vehicle, including a vehicle operated on stationary rails or on a track or rail suspended in the air, and used for the transportation of persons for hire, every robbery of any passenger which is perpetrated on any of these vehicles, and every robbery which is perpetrated in an inhabited dwelling house or trailer coach, as defined in the Vehicle Code, or the inhabited portion of any other building, is robbery of the first degree.

(b) All kinds of robbery other than those listed in subdivision (a) are of the second degree.

SEC. 2. Section 241.3 of the Penal Code is amended to read:

241.3. When an assault is committed against the person of an operator, driver, or passenger on a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle, including a vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or against a schoolbus driver, or against the person of a station agent or ticket agent for the entity providing such transportation, and the person who commits the offense knows or reasonably should know that the victim, in the case

of an operator, driver, or agent, is engaged in the performance of his or her duties, or is a passenger, the offense shall be punished by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 3. Section 243.3 of the Penal Code is amended to read:

243.3. When a battery is committed against the person of an operator, driver, or passenger on a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle, including a vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or against a schoolbus driver, or against the person of a station agent or ticket agent for the entity providing such transportation, and the person who commits the offense knows or reasonably should know that the victim, in the case of an operator, driver, or agent, is engaged in the performance of his or her duties, or is a passenger the offense shall be punished by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. If an injury is inflicted on that victim, the offense 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 two thousand dollars ($2,000), or by imprisonment in the state prison for 16 months, or two or three years.

SEC. 4. Section 245.2 of the Penal Code is amended to read:

245.2. Every person who commits an assault with a deadly weapon or instrument or by any means of force likely to produce great bodily injury upon the person of an operator, driver, or passenger on a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle, including a vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or upon the person of a station agent or ticket agent for the entity providing such transportation, when the driver, operator, or agent is engaged in the performance of his or her duties, and where the person who commits the assault knows or reasonably should know that the victim is engaged in the performance of his or her duties, or is a passenger, shall be punished by imprisonment in the state prison for three, four, or five years.

SEC. 5. Section 481.1 is added to the Penal Code, to read:

481.1. (a) Every person who counterfeits, forges, or alters any fare media designed to entitle the holder to a ride on vehicles of a public transportation system, as defined by Section 99211 of the Public Utilities Code, or on vehicles operated by entities subsidized by the Department of Transportation is punishable by imprisonment in the the county jail, not exceeding one year, or in the state prison.

(b) Every person who knowingly possesses any counterfeit, forged, or altered fare media designed to entitle the holder to a ride on vehicles of a public transportation system, as defined by Section 99211 of the Public Utilities Code, or on vehicles operated by entities subsidized by the Department of Transportation, or who utters,

publishes, or puts into circulation any fare media with intent to defraud is punishable by imprisonment in the county jail not exceeding one year or by a fine not exceeding one thousand dollars ($1,000), or by both.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 802

An act to amend Section 65942 of the Government Code, relating to development projects.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 65942 of the Government Code is amended to read:

65942. The information and the criteria specified in Sections 65940, 65941, and 65941.5 shall be revised as needed so that they shall be current and accurate at all times. Any revisions shall apply prospectively only and shall not be a basis for determining that an application is not complete pursuant to Section 65943 if the application was received before the revision is effective, except for revisions resulting from the following conditions which were not known and could not have been known at the time the application was received:

(a) To provide sufficient information to permit the agency to make the determination required by Section 21080.1 of the Public Resources Code, as provided by Section 65941.

(b) To comply with the enactment of new or revised federal, state, or local requirements, except for new or revised requirements of a local agency which is also the lead agency.

CHAPTER 803

An act to amend Sections 65942 and 66475.4 of the Government Code, relating to development projects.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 65942 of the Government Code is amended to read:

65942. The information and the criteria specified in Sections 65940, 65941, 65941.5 shall be revised as needed so that they shall be current and accurate at all times. Any revisions shall apply prospectively only and shall not be a basis for determining that an application is not complete pursuant to Section 65943 if the application was received before the revision is effective except for revisions for the following reasons resulting from the conditions which were not known and could not have been known by the public agency at the time the application was received:

(a) To provide sufficient information to permit the public agency to make the determination required by Section 21080.1 of the Public Resources Code, as provided by Section 65941.

(b) To comply with the enactment of new or revised federal, state, or local requirements, except for new or revised requirements of a local agency which is also the lead agency.

SEC. 2. Section 66475.4 of the Government Code is amended to read:

66475.4. (a) As used in this section, "dedication" means a transfer by a subdivider to a city, county, or city and county of title to real property or any interest therein, or of an easement or right in real property, the transfer of facilities, or the installation of improvements as defined in Section 66419, or any combination thereof.

(b) A dedication requirement imposed as a condition of approval of a tentative map is invalid to the extent to which it is determined by a court to be excessive. A dedication requirement is excessive to the extent it is not reasonably necessary to meet public needs arising as a result of the subdivision. If, at the time of imposition of the dedication requirement, a city, county, or city and county provides a mechanism for determining the amount of compensation for that portion of the dedication requirement which is excessive, and the manner of payment thereof, this section shall not apply.

(c) A dedication requirement claimed to be excessive in whole or in part, which is imposed as a condition of approval of a tentative map, may be reviewed by a writ of administrative mandate pursuant to Section 1094.5 of the Code of Civil Procedure. In such a proceeding, the petitioner must have protested in the administrative

record the imposition of the dedication, or portion of the dedication, claimed to be excessive. The petition for the writ shall be filed within the time prescribed by Section 66499.37.

(d) If the dedication requirement is determined to be excessive, in whole or in part, the court shall order the city, county, or city and county which imposed the requirement to elect, within 45 days of the date of its order, to take one of the following actions:

(1) To require amendment of the tentative subdivision map or redesign of the subdivision, taking into account the court's decision and the requirements of Sections 66473.1, 66473.5, 66474, and 66474.6.

(2) To pay just compensation for that portion of the dedication determined to be excessive.

(3) To require amendment of the tentative subdivision map by deletion or modification of the dedication found to be excessive.

(e) If the city, county, or city and county elects to pay compensation, the amount of compensation shall be determined as provided by Chapters 8 (commencing with Section 1260.010) and 9 (commencing with Section 1263.010) of Title 7 of Part 3 of the Code of Civil Procedure.

(f) If the city, county, or city and county elects to require redesign of the map or to delete or modify the excessive dedication requirement, the court shall order the action to be taken within 120 days or such longer period of time as determined by the court upon application of either party. The court shall retain jurisdiction to ensure compliance with its order.

(g) If, within 45 days after the date of the court's order, the city, county, or city and county does not elect to take one of the actions specified in paragraph (1) or (3) of subdivision (d), it shall be conclusively presumed to have elected to pay just compensation.

(h) The provisions of this section do not apply to any mitigation measures imposed by local agencies pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) to mitigate adverse environmental impacts identified in an environmental document prepared for the project under that act.

(i) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 2. Pursuant to Section 17579 of the Government Code, the Legislature finds that there is no mandate contained in this act which will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 804

An act to amend Sections 6731, 6735, and 8761 of the Business and Professions Code, relating to consumer affairs.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987.]

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

SECTION 1. Section 6731 of the Business and Professions Code is amended to read:

6731. Civil engineering embraces the following studies or activities in connection with fixed works for irrigation, drainage, waterpower, water supply, flood control, inland waterways, harbors, municipal improvements, railroads, highways, tunnels, airports and airways, purification of water, sewerage, refuse disposal, foundations, framed and homogeneous structures, buildings, or bridges:

(a) The economics of, the use and design of, materials of construction and the determination of their physical qualities.

(b) The supervision of the construction of engineering structures.

(c) The investigation of the laws, phenomena and forces of nature.

(d) Appraisals or valuations.

(e) The preparation or submission of designs, plans and specifications and engineering reports.

(f) Coordination of the work of professional, technical, or special consultants.

Civil engineering also includes city and regional planning insofar as any of the above features are concerned therein.

Civil engineers registered prior to January 1, 1982, shall be authorized to practice all land surveying as defined in Chapter 15 (commencing with Section 8700) of Division 3.

SEC. 2. Section 6735 of the Business and Professions Code is amended to read:

6735. All civil engineering plans, specifications, and reports shall be prepared by a registered civil engineer or by a subordinate under his or her direction, and shall be signed by him or her to indicate his or her responsibility for them. In addition to the signature, all final civil engineering plans, specifications, and reports shall bear the seal or stamp of the registrant, and the expiration date of the certificate or authority. The registered civil engineer shall use together with his or her signature or seal, the title "civil engineer" or, if he or she has the authority, the title "structural engineer" or, if he or she has the authority, the title "soil engineer." If the final civil engineering plans, specifications, or reports have multiple pages or sheets, the signature, seal or stamp, and expiration date of the certificate or authority need only appear on the originals of the plans and on the original title sheet of the specifications and reports.

SEC. 3. Section 8761 of the Business and Professions Code is amended to read:

8761. Any licensed land surveyor or registered civil engineer may practice land surveying and prepare maps, plats, reports, descriptions, or other documentary evidence in connection therewith. All maps, plats, reports, descriptions, or other documents issued by the licensed land surveyor or registered civil engineer shall be signed by the surveyor or engineer to indicate the surveyor's or engineer's responsibility for them. In addition to the signature, the map, plat, report, description, or other document shall bear the seal or stamp of the licensee or registrant and the expiration date of the license or registration. If the map, plat, report, description, or other document has multiple pages or sheets, the signature, seal or stamp, and expiration date of the license or registration need only appear on the originals of the map or plat and on the title sheet of the report, description, or other document.

Every map, plat, report, description, or other document issued by a licensed land surveyor or registered civil engineer shall comply with the provisions set forth in Section 8764, whenever the map, plat, report, description, or other document is filed as a public record.

It is unlawful for any person to sign, stamp, or seal any map, plat, report, description, or other document unless the person is authorized to practice land surveying.

SEC. 3.5. Section 8761 of the Business and Professions Code is amended to read:

8761. Any licensed land surveyor or registered civil engineer may practice land surveying and prepare maps, plats, reports, descriptions, or other documentary evidence in connection therewith. All maps, plats, reports, descriptions, or other documents issued by the licensed land surveyor or registered civil engineer shall be signed by the surveyor or engineer to indicate the surveyor's or engineer's responsibility for them. In addition to the signature, the map, plat, report, description, or other document shall bear the seal or stamp of the licensee or registrant and the expiration date of the license or registration. If the map, plat, report, description, or other document has multiple pages or sheets, the signature, seal or stamp, and expiration date of the license or registration need only appear on the originals of the map or plat and on the title sheet of the report, description, or other document.

Every map, plat, report, description, or other document issued by a licensed land surveyor or registered civil engineer shall comply with the provisions set forth in Section 8764, whenever the map, plat, report, description, or other document is filed as a public record.

It is unlawful for any person to sign, stamp, seal, or approve any map, plat, report, description, or other document unless the person is authorized to practice land surveying.

SEC. 4. Nothing contained in this measure is intended to restrict the ability of a local agency to use nonregistered persons to perform administrative or business activities related to the design or

construction of works of improvement.

SEC. 5. The amendment in Section 1 of this act is declaratory of existing law and is not intended to restrict the scope of practice of other registered professional engineers or licensed land surveyors within their respective scopes of practice.

SEC. 6. Section 3.5 of this bill incorporates amendments to Section 8761 of the Business and Professions Code proposed by both this bill and SB 1123. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 8761 of the Business and Professions Code, and (3) this bill is enacted after SB 1123, in which case Section 3 of this bill shall not become operative.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 805

An act to amend Sections 8725, 8726, 8761, 8761.1, and 8773 of, and to add Sections 8708 and 8774 to, the Business and Professions Code, relating to land surveyors.

[Approved by Governor September 18, 1987 Filed with Secretary of State September 18, 1987]

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

SECTION 1. Section 8708 is added to the Business and Professions Code, to read:

8708. In order to safeguard property and public welfare, no person shall practice land surveying unless appropriately licensed or specifically exempted from licensure under this chapter and only persons licensed under this chapter shall be entitled to take and use the titles "licensed land surveyor," "professional land surveyor," or "land surveyor," or any combination thereof.

SEC. 2. Section 8725 of the Business and Professions Code is amended to read:

8725. Any person practicing, or offering to practice, land surveying in this state shall submit evidence that he or she is qualified to practice and shall be licensed under this chapter.

It is unlawful for any person to practice, offer to practice, or represent himself or herself, as a land surveyor in this state, or to set, reset, replace, or remove any survey monument on land in which he or she has no legal interest, unless he or she has been licensed or specifically exempted from licensing under this chapter.

SEC. 3. Section 8726 of the Business and Professions Code is amended to read:

8726. A person, including any person employed by the state or by a city, county, or city and county within the state, practices land surveying within the meaning of this chapter who, either in a public or private capacity, does or offers to do any one or more of the following:

(a) Locates, relocates, establishes, reestablishes, or retraces the alignment or elevation for any of the fixed works embraced within the practice of civil engineering, as described in Section 6731.

(b) Determines the configuration or contour of the earth's surface, or the position of fixed objects thereon or related thereto, by means of measuring lines and angles, and applying the principles of trigonometry or photogrammetry.

(c) Locates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land, right-of-way, easement, or alignment of those lines or boundaries.

(d) Makes any survey for the subdivision or resubdivision of any tract of land. For the purposes of this subdivision, the term "subdivision" or "resubdivision" shall be defined to include, but not limited to, the definition in the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) or the Subdivided Lands Law (Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of the Business and Professions Code).

(e) By the use of the principles of land surveying determines the position for any monument or reference point which marks a property line, boundary, or corner, or sets, resets, or replaces any such monument or reference point.

(f) Geodetic or cadastral surveying.

(g) Determines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions described in subdivisions (a), (b), (c), (d), (e), and (f).

(h) Indicates, in any capacity or in any manner, by the use of the title "land surveyor" or by any other title or by any other representation that he or she practices or offers to practice land surveying in any of its branches.

(i) Procures or offers to procure land surveying work for himself, herself, or others.

(j) Manages, or conducts as manager, proprietor, or agent, any place of business from which land surveying work is solicited, performed, or practiced.

(k) Determines the information shown or to be shown within the description of any deed, trust deed, or other title document prepared for the purpose of describing the limit of real property in connection with any one or more of the functions described in subdivisions (a) to (f), inclusive.

Any department or agency of the state or any city, county, or city

and county which has an unregistered person in responsible charge of land surveying work on the effective date of the amendments made to this section at the 1984–85 Regular Session of the Legislature shall be exempt from the requirement that the person be licensed as a land surveyor until such time as the person currently in responsible charge is replaced.

The review, approval, or examination by a governmental entity of documents prepared or performed pursuant to this section shall be done by, or under the direct supervision of, a person authorized to practice land surveying.

SEC. 4. Section 8761 of the Business and Professions Code is amended to read:

8761. Any licensed land surveyor or registered civil engineer may practice land surveying and prepare maps, plats, reports, descriptions, or other documentary evidence in connection therewith. All maps, plats, reports, descriptions, or other documents issued by the licensed land surveyor or registered civil engineer shall be signed by the surveyor or engineer to indicate the surveyor's or engineer's responsibility for them. In addition to the signature, the map, plat, report, description, or other document shall bear the seal or stamp of the licensee or registrant and the expiration date of the license or registration.

Every map, plat, report, description, or other document issued by a licensed land surveyor or registered civil engineer shall comply with the provisions set forth in Section 8764, whenever the map, plat, report, description, or other document is filed as a public record.

It is unlawful for any person to sign, stamp, seal, or approve any map, plat, report, description, or other document unless the person is authorized to practice land surveying.

SEC. 4.5. Section 8761 of the Business and Professions Code is amended to read:

8761. Any licensed land surveyor or registered civil engineer may practice land surveying and prepare maps, plats, reports, descriptions, or other documentary evidence in connection therewith. All maps, plats, reports, descriptions, or other documents issued by the licensed land surveyor or registered civil engineer shall be signed by the surveyor or engineer to indicate the surveyor's or engineer's responsibility for them. In addition to the signature, the map, plat, report, description, or other document shall bear the seal or stamp of the licensee or registrant and the expiration date of the license or registration. If the map, plat, report, description, or other document has multiple pages or sheets, the signature, seal or stamp, and expiration date of the license or registration need only appear on the originals of the map or plat and on the title sheet of the report, description, or other document.

Every map, plat, report, description, or other document issued by a licensed land surveyor or registered civil engineer shall comply with the provisions set forth in Section 8764, whenever the map, plat, report, description, or other document is filed as a public record.

It is unlawful for any person to sign, stamp, seal, or approve any map, plat, report, description, or other document unless the person is authorized to practice land surveying.

SEC. 5. Section 8761.1 of the Business and Professions Code is amended to read:

8761.1. The authority of a licensed land surveyor or registered civil engineer to prepare, sign, issue, stamp, seal, or approve any map, plat, report, description, or other document shall be consistent with that person's authority to practice land surveying.

SEC. 6. Section 8773 of the Business and Professions Code is amended to read:

8773. (a) Except as provided in subdivision (b) of Section 8773.4, a person authorized to practice land surveying in this state shall complete, sign, stamp with his or her seal, and file with the county surveyor or engineer of the county where the corners are situated, a written record of corner establishment or restoration to be known as a "corner record" for every corner established by the Survey of the Public Lands of the United States, except "lost corners," as defined by the Manual of Instructions for the Survey of the Public Lands of the United States, and every accessory to such corner which is found, set, reset, or used as control in any survey by such authorized person.

(b) After the establishment of a lost corner, as defined by the Manual of Instructions for the Survey of the Public Lands of the United States, a record of survey shall be filed as set forth in Section 8764.

(c) Any person authorized to practice land surveying in this state may file such corner record for any property corners, property controlling corners, reference monuments, or accessories to a property corner.

SEC. 7. Section 8774 is added to the Business and Professions Code, to read:

8774. (a) The right of entry upon or to real property to investigate and utilize boundary evidence, and to perform surveys, is a right of persons legally authorized to practice land surveying, and it is the responsibility of the owner or tenant who owns or controls property to provide reasonable access without undue delay. The right of entry is not contingent upon the provision of prior notice to the owner or tenant. However, the owner or tenant shall be notified of the proposed time of entry where practicable.

(b) The requirements of subdivision (a) do not apply to monuments within access-controlled portions of freeways.

(c) When required for a property survey, monuments within a freeway right-of-way shall be referenced to usable points outside the access control line by the agency having jurisdiction over the freeway when requested in writing by the registered civil engineer or licensed land surveyor who is to perform the property survey. The work shall be done within a reasonable time period by the agency in direct cooperation with the engineer or surveyor and at no charge

to him or her.

SEC. 8. Section 4.5 of this bill incorporates amendments to Section 8761 of the Business and Professions Code proposed by both this bill and AB 453. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 8761 of the Business and Professions Code, and (3) this bill is enacted after AB 453, in which case Section 4 of this bill shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for other costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law for those other costs.

CHAPTER 806

An act to amend Section 21263.6 of the Government Code, relating to the Public Employees' Retirement System, and making an appropriation therefor.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 18, 1987]

While I am supportive of the concept of providing survivors' continuance benefits in conformity with relevant case law, I find use of the Public Employees' Retirement Fund's Reserve Against Deficiencies for ongoing costs related to a select group of annuitants to be unacceptable. Use of the Reserve Against Deficiencies indirectly would affect all employers' contributions to PERS, and those employers should not have to pay -- directly or indirectly -- for the ongoing costs of a single group that is associated with specific employers. I therefore delete the appropriation made in Section 1 of SB 706 (proposed as subdivision (f) of Section 21263 6 of the Government Code)·

"(f) The cost of the additional benefits provided pursuant to the trial court decision in California State Employees Association, et al. v. Board of Administration of the Public Employees' Retirement System et al. (Sacramento County Superior Court, Case No 332315) shall be paid out of the reserve against deficiencies established by Section 20203."

With this deletion, I approve Senate Bill No 706 and note that any benefit payments necessary under this measure still can be made from funds available to the PERS Board of Administration

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 21263.6 of the Government Code is amended to read:

21263.6. (a) The monthly allowance provided by Sections 21263.4 and 21263.5 shall be paid on account of retired school members who did not at retirement elect optional settlement 2 or 3 or an optional settlement involving life contingency under optional settlement 4.

(b) Upon receipt of a written application for benefits at the office of the board, the benefits provided by this section shall be payable to eligible survivors of retired school members who are not receiving a monthly allowance on account of miscellaneous service as a state member.

(c) When there are no records in the board's possession that contain necessary data for determining the retirement benefit claimed, the applicant or applicants for the benefit shall be required to establish entitlement to the benefit upon evidence satisfactory to the board. That data, at a minimum, shall be sufficient to establish the date of the retired member's death and the amount of the retired member's monthly allowance payable at the time of his or her death. The net benefit payable to the retired school member at the date of death may be determined by the board on the basis of the evidence submitted or upon other evidence if that evidence allows the board to determine the unmodified allowance payable on the date of death. The board shall use available evidence, whether from information provided by the applicant, partial records in possession of the board, or from other sources, as the basis for assumptions that are necessary in order to calculate the allowance payable to the eligible survivor or survivors.

(d) The benefits provided by this section shall be subject to the same eligibility and termination provisions which apply to members at their retirement and shall be paid commencing on the first day of the month succeeding the month in which the application for the benefits of this section is received by the board.

(e) The board has no duty to identify, locate, or notify any survivor of a retired school member who may potentially be eligible for the benefits of this section. The board has no duty to provide the name or address of any potential survivor to any person, agency, or entity for the purpose of notifying survivors who may potentially be eligible for the benefits of this section.

(f) The cost of the additional benefits provided pursuant to the trial court decision in California State Employees Association, et al. v. Board of Administration of the Public Employees' Retirement System et al. (Sacramento County Superior Court, Case No. 332315) shall be paid out of the reserve against deficiencies established by Section 20203.

SEC. 2. It is the intent of this act to implement the intent of the Legislature in enacting Section 21263.6 of the Government Code in

Chapter 330 of the Statutes of 1982, as determined by the Superior Court of Sacramento County, in Case No. 332315, California School Employees' Association, et al. v. Board of Administration of the Public Employees' Retirement System, et al.

CHAPTER 807

An act to amend Section 21252.02 of, and to add Section 20017.985 to, the Government Code, relating to state employees.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 19, 1987.]

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

SECTION 1. Section 20017.985 is added to the Government Code, to read:

20017.985. (a) "State peace officer/firefighter member" also includes employees of the California State University who are campus fire apparatus engineers and who are members represented by Technical and Support Services Unit No. 9.

(b) This section shall be operative with respect to the employees described in subdivision (a) only if authorized by, and in accordance with, a memorandum of understanding reached between the Trustees of the California State University and the recognized employee organization pursuant to the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4 of Title 1.

(c) Any person who becomes eligible for the benefit provided by Section 21252.02 as provided for in this section, may elect, within 90 days of notification by the board, to remain subject to the service retirement benefit and normal rate of contribution applicable prior to the operative date of this section, by filing an irrevocable notice of election with the board.

SEC. 2. Section 21252.02 of the Government Code is amended to read:

21252.02. The combined current and prior service pensions for state peace officer/firefighter members subject to this section with respect to state peace officer/firefighter service which is subject to this section is a pension derived from the contributions of the employer sufficient when added to the service retirement annuity which is derived from the accumulated normal contributions of the state peace officer/firefighter member at the date of his or her retirement to equal the fraction of one-fiftieth of his or her final compensation set forth opposite his or her age at retirement taken to the preceding completed quarter-year, in the following table, multiplied by the number of years of state peace officer/firefighter service subject to this section with which he or she is credited at

retirement.

Age at Retirement	Fraction
50	1.0000
50¼	1.0125
50½	1.0250
50¾	1.0375
51	1.0500
51¼	1.0625
51½	1.0750
51¾	1.0875
52	1.1000
52¼	1.1125
52½	1.1250
52¾	1.1375
53	1.1500
53¼	1.1625
53½	1.1750
53¾	1.1875
54	1.2000
54¼	1.2125
54½	1.2250
54¾	1.2375
55 and over	1.2500

In no event shall the current service pension and the combined current and prior service pensions under this section for all service to all employers exceed an amount which, when added to the service retirement annuity related to such service, equals 75 percent of final compensation. If the pension relates to service to more than one employer, or this section and Section 21252.6, and would otherwise exceed such maximum, the pension payable with respect to each section or employer shall be reduced in the same proportion as the allowance bears to the total allowance computed as though there were no limit, so that the total of such pensions shall equal the maximum.

The Legislature reserves, with respect to any member subject to this section, the right to provide for such adjustment of industrial disability retirement allowances because of earnings of a retired person and modification of the conditions and qualifications required for retirement for disability as it may find appropriate because of the earlier age of service retirement made possible by the benefits under this section.

This section may be applied to related supervisory classes or confidential positions for the respective bargaining units specified in this section.

This section shall be operative with respect to state peace officer/firefighter members in Corrections Bargaining Unit No. 6,

Protective Services and Public Safety Bargaining Unit No. 7, or Firefighters Bargaining Unit No. 8, in accordance with a memorandum of understanding is reached between the state and the exclusive bargaining agent in the respective unit pursuant to the State Employer-Employee Relations Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1). This section also shall be operative with respect to the state peace officer/firefighter members employed by a California State University police department who are in Public Safety Unit No. 8 in accordance with a memorandum of understanding reached between the Board of Trustees of the California State University and the recognized employee organization pursuant to the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4 of Title 1).

This section shall also be operative with respect to a "state peace officer/firefighter member" defined in subdivision (a) of Section 20017.985 if authorized by, and in accordance with, a memorandum of understanding reached between the Trustees of the California State University and the recognized employee organization pursuant to the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4 of Title 1).

Nothing in this section or in any other provision of law affected by the bill amending this section in 1984 of the 1983–84 Regular Session of the Legislature or the bill amending this section in 1986 of the 1985–86 Regular Session shall be construed as authorizing any future negotiation with respect to whether or not any bargaining unit specified in this section whose memorandum of understanding was previously approved by the Legislature pursuant to law and this section, shall continue to remain within the state peace officer/firefighter membership category.

The operative date of this section with respect to members in each of the bargaining units specified in this section shall be as provided for in the memorandum of understanding.

This section shall not apply to a person whose effective date of retirement is prior to the operative date of this section with respect to the bargaining unit of the person.

This section shall be known as, and may be cited as the State Peace Officers' and Fire Fighters' Retirement Act.

The Legislature reserves the right to subsequently modify or amend this part in order to completely effectuate the intent and purposes of this section and the right to not provide any new comparable advantages if disadvantages to employees result from any such modification or amendment.

CHAPTER 808

An act to add Chapter 5.3 (commencing with Section 510) to Part 1 of Division 1 of the Insurance Code, relating to insurance.

[Approved by Governor September 18, 1987. Filed with Secretary of State September 19, 1987.]

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

SECTION 1. Chapter 5.3 (commencing with Section 510) is added to Part 1 of Division 1 of the Insurance Code, to read:

CHAPTER 5.3. CONSUMER COMPLAINTS

510. Whenever a policy of insurance specified in Section 660 or 675 is first issued to a new policyholder in this state, the insurer shall include a written disclosure containing the name, address, and toll-free telephone number of the unit within the Department of Insurance which deals with consumer affairs. The disclosure shall be printed in large, boldface type.

The disclosure shall contain a statement that the Department of Insurance should be contacted only after the contacts between the complainant and the insurer or its agent or other representative have failed to produce a satisfactory solution to the problem.

SEC. 2. This act shall be operative on July 1, 1988.

CHAPTER 809

An act to add Chapter 10 (commencing with Section 9760) of Part 1 of Division 8.5 of the Welfare and Institutions Code, relating to senior health care, and making an appropriation therefor.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 19, 1987]

I am deleting the appropriation contained in Section 2 of this bill

This bill would appropriate $225,000 out of the General Fund for the Office of Statewide Health Planning and Development to conduct a needs assessment study of the availability of dental, vision, and hearing care services to low-income seniors

The demands placed on budget resources require all of us to set priorities. The budget enacted in July 1987 appropriated nearly $41 billion in state funds. This amount is more than adequate to provide the necessary essential services provided for by state government It is not necessary to put additional pressure on taxpayer funds for programs that fall beyond the priorities currently provided.

Therefore, I am asking the Office of Statewide Health Planning and Development to commence the needs assessment study this fiscal year utilizing resources from the California Health Data and Planning Fund and to request funding for the 1988–89 fiscal year from the same fund through the normal budget process

With this deletion, I approve Assembly Bill No. 519.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Chapter 10 (commencing with Section 9760) is added to Part 1 of Division 8.5 of the Welfare and Institutions Code, to read:

CHAPTER 10. SENIOR HEALTH CARE ASSESSMENT ACT OF 1987

9760. This chapter shall be known and may be cited as the Senior Health Care Assessment Act of 1987.

9761. The Office of Statewide Health Planning and Development shall conduct a needs assessment study of the availability of adequate and timely dental care, eye care, and hearing care to senior citizens age 60 and older with low incomes. The needs assessment shall be conducted in conjunction with various professional organizations, including, but not limited to, the California Dental Association, California Optometric Association, the California Medical Association, the California Ophthalmologists Association, and the California Speech-Language-Hearing Association.

9762. (a) The needs assessment conducted pursuant to this chapter shall include an analysis of what benefits are currently available and unavailable under the Medi-Cal and Medicare programs.

(b) Based on the needs assessment, the office shall determine whether there is need for a state loan or grant program to provide adequate and timely dental care, eye care, and hearing care to senior citizens age 60 and older with low incomes. If it is determined there is such a need, the office shall assess the feasibility of the program and propose income eligibility criteria for senior citizens under such a program.

9763. The office shall report to the Legislature by March 30, 1989, on the needs assessment required by this chapter as well as its determinations and assessments specified in subdivision (b) of Section 9762.

SEC. 2. The sum of two hundred twenty-five thousand dollars ($225,000) is hereby appropriated from the General Fund to the Office of Statewide Health Planning and Development to conduct the needs assessment study and to prepare the report required by Chapter 10 (commencing with Section 9760) of Part 1 of Division 8.5 of the Welfare and Institutions Code.

CHAPTER 810

An act to add Section 20930.5 to the Government Code, relating to the Public Employees' Retirement System, and making an appropriation therefor.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 20930.5 is added to the Government Code, to read:

20930.5. "Public service" with respect to a state member or a school member or with respect to a retired former state member or a retired former school member, who retired on or after December 31, 1981, also means active service, prior to entering this system as a state member or as a school member, of not less than one year in the armed forces of the United States, or, active service, prior to entering this system as such a state or school member, of not less than one year in the Merchant Marine of the United States prior to January 1, 1950. Public service credit shall not be granted if the service described above terminated with a discharge under dishonorable conditions. The public service credit to be granted for that service shall be on the basis of one year of credit for each five years of credited state service, but shall not exceed a total of four years of public service credit regardless of the number of years of either that service or subsequent state service. A state member or a school member or a retired former state member or a retired former school member electing to receive a credit for such public service shall have been credited with at least 10 years of state service on the date of election or the date of retirement.

An election by a state member or a school member with respect to public service under this section may be made only while the member is in state, university, or school employment, and a retired former member shall have retired immediately following service as a state member or as a school member. The retirement allowance of a retired former state member or a retired former school member, who elects to receive public service credit pursuant to this section shall be increased only with respect to the allowance payable on and after the date of election. For the purposes of this section, a member as described in subdivision (d) of Section 20685, shall also mean a former state member or a former school member, who retired on or after December 31, 1981.

A member or retired former member who elects to become subject to this section shall pay all reasonable administrative costs and contributions, sufficient to cover the total employer and employee cost plus interest of the military service credit, at rates to be determined by the board. The amount shall be contributed in

lump sum or by installments over such period and subject to such minimum payments as may be prescribed by regulations of the board. Payments for administrative costs shall be credited to the current appropriation for support of the board and available for expenditures by the board to fund positions deemed necessary by the board to implement this section.

Notwithstanding Section 20813.1, a member or a retired former member whose military service credited pursuant to this section is subject to Section 21251.146 shall pay, in addition to all reasonable administrative costs, contributions, sufficient to cover the total employer cost plus interest of the military service credit, at rates to be determined by the board.

Contributions paid by a person subject to Section 21251.146 for service under this section shall be credited to the appropriate state employer account.

The board has no duty to locate or notify any eligible former member who is currently retired or to provide the name or address of any such retired person, agency, or entity for the purpose of notifying those persons.

CHAPTER 811

An act to add Sections 92205 and 92205.5 to the Education Code, relating to the University of California.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 92205 is added to the Education Code, to read:

92205. In the investment and management of endowment funds and properties under its jurisdiction, the Board of Directors of the Hastings College of the Law shall comply with the endowment investment and management policies of the Regents of the University of California, including, but not limited to, the following requirements:

(a) That the utilization of funds be in accordance with the terms specified by the donor.

(b) That prior to the authorization of an investment, reallocation, or reinvestment, of endowment funds, the board shall seek and shall review the written opinion of the general counsel regarding the propriety of the proposed action.

(c) That "endowment fund" is defined as a fund derived from a gift, bequest, or grant, the terms of which stipulate that the fund principal must remain inviolate and that only the income may be expended.

(d) That annual audits by a certified public accountant firm be conducted in accordance with generally accepted auditing standards established by the American Institute of Certified Public Accountants.

SEC. 2. Section 92205.5 is added to the Education Code, to read:

92205.5. It is the intent of the Legislature that the Regents of the University of California provide for a review of the annual audits conducted pursuant to subdivision (d) of Section 92205 and report to the Board of Directors of the Hastings College of the Law and to the Legislature any violations revealed by those audits.

CHAPTER 812

An act to amend Section 25351 of, and to add Section 14681.5 to, the Government Code, relating to public facilities.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 14681.5 is added to the Government Code, to read:

14681.5. (a) Whenever the Director of General Services, or any other director of a state agency, excluding the California State University, who has the necessary decisionmaking authority, decides either to go out to bid to construct a state building, expand an existing building, expand the use of an existing building, or enter into a lease of an existing building, he or she shall notify in writing, at least 60 days prior to going out to bid or entering into a lease, all of the following officials of his or her intent to construct, expand, or lease the building, along with a description of the location of the building:

(1) Each Member of the Legislature whose district encompasses the location of the building to be constructed, expanded, or leased or whose district encompasses the location of the building to be relocated when the relocation is to another member's district.

(2) The clerk of the county board of supervisors in the county in which the building is to be constructed, expanded, or leased.

(3) If the building is to be constructed, expanded, or leased within a city, the city clerk and the mayor of the city.

(b) In those instances where the Director of General Services or any other director of a state agency, excluding the California State University, is exempt from the bidding process, the decisionmaking authority shall notify the clerk of the legislative body of the affected agency described in subdivision (a), in writing, at least 60 days prior to the construction, expansion, or lease of a building.

SEC. 2. Section 25351 of the Government Code is amended to read:

25351. (a) The board may construct, expand, lease, build, rebuild, furnish, refurnish, or repair buildings for a hospital, almshouse, courthouse, jail, historical museum, aquarium, library, art gallery, art institute, exposition building for exhibiting and advertising farming, mining, manufacturing, livestock raising, and other resources of the county, stadium, coliseum, sports arena, or sports pavilion or other building for holding sports events, athletic contests, contests of skill, exhibition, spectacles and other public meetings, and such other public buildings as are necessary to carry out the work of the county government.

(b) Whenever the board of supervisors of a county decides to go out to bid to construct a county building, expand an existing building, expand the use of an existing building, or enter into a lease of an existing building within the incorporated territory of a city, the board shall notify in writing, at least 60 days prior to going to bid or entering into a lease, the city clerk of the city where the building is to be constructed, expanded, or leased.

(c) In those instances where the board is exempt from the bidding process, the board shall notify the city clerk in writing, at least 60 days prior to the construction, expansion, or lease of a building.

SEC. 3. The Department of General Services shall conduct a study regarding the feasibility of consolidating all state leaseholds east of Interstate 15 and south of a line running directly east-west through the City of Poway and north of the Mexican border, into a state building to be located adjacent to and consistent with the El Cajon East County Regional Center. The results of this study shall be reported to the Legislature by January 1, 1989.

SEC. 4. The Department of General Services shall conduct a study regarding the feasibility of consolidating all state leaseholds within the City of Fresno. In conducting this study, the department shall coordinate and work with the City of Fresno. The results of this study shall be reported to the Legislature by January 1, 1989.

SEC. 5. The Department of General Services shall conduct a study regarding the feasibility of consolidating all state leaseholds in the County of Riverside into a state building in the western part of the county. The department shall consult with affected local governments. The results of this study shall be reported to the Legislature by January 1, 1989.

SEC. 6. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 813

An act to add Section 21252.04 to the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 21252.04 is added to the Government Code, to read:

21252.04. A contracting agency which is a county of the 33rd class, as defined by Sections 28020 and 28054, as amended by Chapter 1204 of the Statutes of 1971, and which, pursuant to the Meyers-Milias-Brown Act, enters into a binding memorandum of understanding which agrees to the application of this section may elect to be subject to Section 21252.01 with respect to only those local safety members who are county peace officers as defined by Section 20021.5.

This section shall not apply to any contracting agency unless and until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or, in the case of contracts made on or after January 1, 1988, by express provision in the contract making the contracting agency subject to this section.

SEC. 2. It is the intent of the Legislature that the benefit formula extended to certain county peace officers employed by Kings County by this act shall not be made available to a subcategory within any category of employees employed by any other contracting agency of the Public Employees' Retirement System until the Assembly Committee on Public Employees, Retirement, and Social Security and the Senate Committee on Public Employment and Retirement, as a result of joint interim study on the subject of optional local safety retirement formulas for limited subcategories of local safety members, make recommendations to the Legislature.

SEC. 3. The Legislature hereby finds and declares that employment conditions in Kings County are unique and that a general statute, within the meaning of Section 16 of Article IV of the Constitution, cannot be made applicable thereto.

SEC. 4. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 814

An act to amend Section 597 of the Penal Code, relating to animals.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 597 of the Penal Code is amended to read:

597. (a) Except as provided in subdivision (c), every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal which is the property of the person or which is the property of another, or maliciously and intentionally kills an animal which is the property of the person or which is the property of another, is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, or by a fine of not more than two thousand dollars ($2,000), or by both the fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a misdemeanor.

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, by a fine of not more than two thousand dollars ($2,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and

Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c) each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 815

An act to amend Section 11628 of, and to add Section 11585 to, the Insurance Code, relating to insurance.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 11585 is added to the Insurance Code, to read:

11585. (a) No policy of insurance for residential property located within California shall be issued or delivered, and no existing policy of insurance for residential property located within California shall be renewed, unless the policy complies with the requirements of subdivision (b).

(b) If the policy includes any liability insurance, or if a liability insurance policy is issued in connection with the policy, the policy shall cover liability incurred by the insured in connection with the use of the residential property for a polling place for any state or local election, under the same terms and conditions as for other liability covered by the policy.

SEC. 2. Section 11628 of the Insurance Code is amended to read:

11628. (a) No admitted insurer, licensed to issue and issuing motor vehicle liability policies as defined in Section 16450 of the Vehicle Code, shall fail or refuse to accept an application for such insurance, to issue such insurance to an applicant therefor, or issue or cancel such insurance under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, language, color, religion, national origin, ancestry, or the same geographic area; nor shall race, language, color, religion, national origin, ancestry, or location within a geographic area of itself constitute a condition or risk for which a higher rate, premium, or charge may be required of the insured for such insurance.

As used in this section "geographic area" means a portion of this state of not less than 20 square miles defined by description in the rating manual of an insurer or in the rating manual of a rating bureau of which the insurer is a member or subscriber. In order that geographic areas used for rating purposes may reflect homogeneity of loss experience, a record of loss experience for such geographic area shall include the breakdown of actual loss experience statistics by zip code area (as designated by the United States Postal Service) within each geographic area for family owned private passenger motor vehicles and lightweight commercial motor vehicles, under 1½-ton load capacity, used for local service or retail delivery, normally within a 50-mile radius of garaging, and which are not part of a fleet of five or more motor vehicles under one ownership. A

record of loss experience for such geographic area, including such statistical data by zip code area, shall be submitted annually to the commissioner for examination by each insurer licensed to issue and issuing motor vehicle liability policies, motor vehicle physical damage policies, or both. Loss experience shall include separate loss data for each type of coverage, including liability or physical damage coverage, underwritten. An insurer may satisfy its obligation to report statistical data under this subdivision by providing its loss experience data to a rating or advisory organization for submission to the commissioner. This data shall be made available to the public by the commissioner annually after examination; however, it shall be released in aggregate form by zip code in order that no individual insurer's loss experience for any specific geographic area be revealed. Differentiation in rates between geographical areas shall not constitute unfair discrimination.

All information reported to the department pursuant to this subdivision shall be confidential.

As used in this section, "language" means the inability to speak, read, write, or comprehend the English language.

(b) No admitted insurer, licensed to issue and issuing motor vehicle liability insurance policies as defined in Section 16450 of the Vehicle Code, shall fail or refuse to accept an application for such insurance, refuse to issue such insurance to an applicant therefor, or cancel such insurance solely for the reason that the applicant for such insurance or any insured is employed in a specific occupation.

Nothing in this section shall prohibit an insurer from:

(1) Considering the occupation of the applicant or insured as a condition or risk for which a higher rate or discounted rate may be required or offered for coverage in the course and scope of his or her occupation.

(2) Charging a deviated rate to any classification of risks involving a specific occupation, or grouping thereof, if the rate meets the requirements of Chapter 9 (commencing with Section 1850) of Part 2 of Division 1 and is based upon actuarial data which demonstrates a significant actual historical differential between past losses or expenses attributable to the specific occupation, or grouping thereof, and the past losses or expenses attributable to other classification of risks. For purposes of compiling such actuarial data for a specific occupation or grouping thereof, a person shall be deemed employed in the occupation in which that data is compiled if: (A) the majority of his or her employment during the previous year was in the occupation, or (B) the majority of his or her aggregate earnings for the immediate preceding three-year period were derived from the occupation, or (C) the person is a member in good standing of a union which is an authorized collective bargaining agent for persons engaged in the occupation.

Nothing in this section shall be construed to include in the definition of "occupation" active duty service in the Armed Forces of the United States, any status or activity which does not result in

remuneration for work done or services performed, or self-employment in a business operated out of an applicant's or insured's place of residence or persons engaged in the renting, leasing, selling, repossessing, rebuilding, wrecking, or salvaging of motor vehicles.

(c) Nothing in this section shall limit or restrict the ability of an insurer to refuse to accept an application for or refuse to issue or cancel such insurance for the reason that it is a commercial vehicle or based upon the consideration of a vehicle's size, weight, design, or intended use.

(d) It is the intent of the Legislature that actuarial data by occupation may be examined for credibility by the commissioner on the same basis as any other automobile insurance data which he or she is empowered to examine.

(e) The provisions of this section shall be known and may be cited as the "Rosenthal-Robbins Auto Insurance Nondiscrimination Law."

SEC. 3. The amendments to Section 11628 of the Insurance Code made by Section 2 of this act shall become effective on July 1, 1988.

CHAPTER 816

An act to amend Sections 3924 and 3930 of, and to add Sections 3924.5, 3927, 3927.5, 3928, 3928.5, 3929, and 3930.1 to, the Business and Professions Code, and to add Section 1429.5 to the Health and Safety Code, relating to nursing homes.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. The Legislature finds and declares that there is an identifiable group of long-term health care facilities which receive the majority of citations for poor conditions endangering resident health and safety.

The Legislature also finds that there is currently no formalized system to identify the licensed administrators who operate these facilities and determine whether there is a similar group of identifiable individuals whose performance of their duties endanger resident health and safety.

The Legislature finds that without such a system and with the anticipated growth of nursing facilities in California, it will become increasingly difficult to identify problem administrators who may move from facility to facility.

It is therefore the intent of the Legislature to provide the Board of Examiners of Nursing Home Administrators with regular information regarding actions taken against facilities to assist the board in performing its licensing function and to develop a system

that will permit the board to identify and take action against administrators where the record developed over time establishes a pattern of poor performance.

The Legislature intends that the board utilize remedial and disciplinary actions, both formal and informal, to assure the qualifications and competency of persons licensed by the board and in the most serious cases to suspend or revoke a license.

SEC. 1.5. Section 3924 of the Business and Professions Code is amended to read:

3924. (a) Every holder of a nursing home administrator's license shall reregister biennially, on dates specified by the board, by making application for reregistration. In the event that the license of an individual is not reregistered within three years from the date of expiration, it shall lapse and that individual shall again apply for licensing and meet all requirements of this chapter as for a new applicant.

(b) A condition of reregistration shall be the presentation of proof by the licensee that he or she has attended the number of classroom hours of approved continuing educational programs, classes, seminars, or proceedings required by the regulations promulgated by the board, at least 25 percent of which shall be in the area of aging and patient care. The board, at its discretion, may except from continuing education requirements, the licensees who for reasons of health, military service, or other good cause cannot meet those requirements. Each such waiver granted shall be for the current reregistration period only.

(c) A licensee may reregister pursuant to this chapter, although he or she may not currently be actively engaged in nursing home administration.

SEC. 2. Section 3924.5 is added to the Business and Professions Code, to read:

3924.5. The board shall conduct a study of the current approval process for continuing education courses and the administrator training programs.

The board shall report to the Legislature on or before December 1, 1988, on the progress of the study.

SEC. 3. Section 3927 is added to the Business and Professions Code, to read:

3927. Each licensee shall, within 30 days, notify the board each time that he or she becomes the designated administrator of a long-term health care facility and each time that the appointment terminates. Each notification shall include the name and address of the facility or facilities involved.

The board shall regularly provide this information to the Licensing Division of the State Department of Health Services.

SEC. 4. Section 3927.5 is added to the Business and Professions Code, to read:

3927.5. The board shall maintain a current listing of administrators who have been placed on probation or had their

licenses suspended or revoked within the last three years. The board shall provide the list to licensed long-term health care facilities and the State Department of Health Services every six months and provide updates of the list to facilities, consumers, and family members upon request.

SEC. 5. Section 3928 is added to the Business and Professions Code, to read:

3928. (a) The board shall maintain a record of enforcement actions reported to the board by the State Department of Health Services pursuant to Section 1429.5 of the Health and Safety Code.

Following receipt of reports on temporary suspension orders, service of an accusation for facility license revocations, and final decertification of a facility from participation in the Medi-Cal or Medicare program due to failure to meet certification standards, the board shall make a determination as to whether the facts of the case warrant remedial or disciplinary action against the administrator or constitute grounds for suspension or revocation pursuant to Section 3930.

If the board determines that action against the administrator is not warranted, the board shall make a notation in the file of the specific circumstances which make remedial or disciplinary action unwarranted.

Whenever possible, actions initiated by the board shall coincide with actions of the State Department of Health Services against facilities.

Any accusation to suspend or revoke an administrator's license under this section shall be served on the administrator no later than 12 calendar months after the issuance of the temporary suspension order, service of an accusation to revoke a facility's license, or final decertification from the Medi-Cal or Medicare program.

(b) The board shall continuously review the files of administrators where citation reports have been received to determine if remedial or disciplinary action is warranted. The board shall initiate disciplinary action against an administrator if the record establishes evidence of a pattern of poor performance.

The board shall consider all of the following in making any determination to initiate disciplinary action:

(1) Any information provided to the board by the administrator pursuant to subdivision (c).

(2) The facts or reports received occurred during the time the administrator was serving in the capacity of administrator in the facility which received the citation.

(3) Whether the administrator could have or should have prevented the circumstances which resulted in citations.

(c) The board shall develop and make available a form which may be utilized at the administrator's option to provide the board with relevant information and background on any actions reported to the board pursuant to Section 1429.5 of the Health and Safety Code.

(d) Reports received pursuant to Section 1429.5 of the Health and

Safety Code shall remain in the administrator's file for five years, unless the board is notified that the action has been overturned. Any modification of an action through appeals shall be noted.

(e) Prior to making a final determination to initiate action against an administrator, the board shall notify the administrator that the board is considering action and provide the administrator with an opportunity to show just cause why remedial or disciplinary action should not be initiated.

SEC. 5.5. Section 3928.5 is added to the Business and Professions Code, to read:

3928.5. On or before July 1, 1988, the board shall develop internal policies and procedures with input from long-term care facility provider associations, the Department of Health Services Licensing Division, the Office of the State Attorney General, administrators who are not facility owners, and consumer representatives, regarding factors to be considered in the determination of whether or not remedial or disciplinary actions are warranted.

SEC. 6. Section 3929 is added to the Business and Professions Code, to read:

3929. If the board determines that reports received by the State Department of Health Services establish evidence of a pattern of poor performance of the duties for which a license is issued by the board or if the reports received constitute grounds for suspension or revocation of a license under Section 3930, the board shall initiate either or both of the following actions, as warranted:

(a) Remedial action, including, but not limited to, a conference with the administrator, or a letter of warning.

(b) Disciplinary action, including, but not limited to, citations or fines, or both, pursuant to Section 125.9, probation, or suspension or revocation of the administrator's license.

SEC. 7. Section 3930 of the Business and Professions Code is amended to read:

3930. The board may deny, or may suspend or revoke, a license upon any of the following grounds:

(a) Gross negligence.

(b) Incompetence.

(c) The conviction of any crime involving dishonesty, or which is substantially related to the qualifications, functions, or duties of a nursing home administrator. A conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

(d) Using fraud or deception in applying for a license or in taking the examination provided for in this chapter.

(e) Treating or attempting to treat any physical or mental condition without being currently licensed to do so.

(f) Violating Section 650 of the Business and Professions Code, any provision of this chapter or any rule or regulation of the board adopted pursuant to this chapter.

(g) Lack of any qualification requirement for the license.

(h) Failure to report under Section 3927 to the board, without just cause.

SEC. 8. Section 3930.1 is added to the Business and Professions Code, to read:

3930.1. The board shall report to the Legislature by March 1, 1989, on all of the following:

(a) The number of reports received from the State Department of Health Services pursuant to Section 1429.5 of the Health and Safety Code.

(b) The number of reports which warranted remedial or disciplinary action and actions initiated by the board.

(c) The policies and procedures developed by the board pursuant to Section 3928.

(d) The impact of the new responsibilities under the provisions of this chapter on the board's workload and resources.

(e) Any recommendations and justification for additional revenues to the board based on the responsibilities of the board under this chapter.

SEC. 9. Section 1429.5 is added to the Health and Safety Code, to read:

1429.5. (a) The state department shall report enforcement actions taken against a facility, and the name of the licensed administrator of the facility, to the State Board of Examiners of Nursing Home Administrators.

(b) The following actions shall be reported to the State Board of Examiners of Nursing Home Administrators:

(1) Temporary suspension orders.

(2) Final decertification from the Medi-Cal or Medicare programs based on failure to meet certification requirements.

(3) Service of an accusation to revoke a facility's license.

(4) Any class "AA" citations and three class "A" citations within the same facility with the same administrator within a one calendar year period. The State Department of Health Services shall notify the board in the event that citations are overturned or modified in citation review conference, through binding arbitration, or on appeal.

SEC. 10. Sections 1 to 5, inclusive, and Sections 6 to 9, inclusive, of this act shall become operative on July 1, 1988.

CHAPTER 817

An act to repeal Section 110 of the Water Code, relating to water rights.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 110 of the Water Code is repealed.

CHAPTER 818

An act to amend Section 309 of the Health and Safety Code, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 309 of the Health and Safety Code is amended to read:

309. (a) It is the policy of the State of California to make every effort to detect, as early as possible, phenylketonuria and other preventable heritable or congenital disorders leading to mental retardation or physical defects.

The State Department of Health Services shall establish a genetic disease unit, which shall coordinate all programs of the state department in the area of genetic disease. The unit shall promote a statewide program of testing information and counseling services and shall have the responsibility of designating tests and regulations to be used in executing this program. The tests shall be in accordance with accepted medical practices and shall be administered to each child born in California at such time as the state department has established appropriate regulations and testing methods. The state department may provide laboratory testing facilities or contract with any laboratory which it deems qualified to conduct tests required under this section. However, notwithstanding Section 309.5, provision of laboratory testing facilities by the state department shall be contingent upon the provision of funding therefor by specific appropriation to the Genetic Disease Testing Fund enacted by the Legislature. If moneys appropriated for purposes of this section are not authorized for expenditure to provide laboratory facilities, the state department may nevertheless contract to provide laboratory testing services pursuant to this section and shall perform laboratory

services, including, but not limited to, quality control, confirmatory, and emergency testing, necessary to ensure the objectives of this program.

(b) The state department shall charge a fee for any tests performed pursuant to this section. The amount of the fee shall be established and periodically adjusted by the State Director of Health Services in order to meet the costs of this section.

(c) The state department shall inform all hospitals or physicians, or both, of required regulations and tests and may alter or withdraw any of these requirements whenever sound medical practice so indicates.

(d) This section shall not apply if a parent or guardian of the newborn child objects to a test on the ground that the test conflicts with his or her religious beliefs or practices.

(e) The genetic disease unit is authorized to make grants or contracts for demonstration projects to determine the desirability and feasibility of additional tests or new genetic services or to initiate the development of genetic services in areas of need or to purchase or provide the services from any sums as are appropriated for this purpose.

The genetic disease unit shall evaluate and prepare recommendations on the implementation of tests for the detection of hereditary and congenital diseases, biotinidase deficiency, and hereditary hemoglobinopathies. The State Department of Health Services shall implement a program for the detection of phenylketonuria, galactosemia, hypothyroidism, and sickle cell anemia commencing on or before July 1, 1988. The genetic disease unit shall prepare and submit a report outlining their findings and recommendations with an implementation schedule to the Legislature on or before January 30, 1988. Followup reports on the recommendations shall be included in the annual report prepared by the State Director of Health Services pursuant to Section 153.

(f) Health care providers which contract with a prepaid group practice health care service plan that annually has at least 20,000 births among its membership, may provide, without contracting with the state department, any or all of the testing and counseling services required to be provided under this section or the regulations adopted pursuant thereto, if the services meet the quality standards and adhere to the regulations established by the state department and the plan pays that portion of a fee established under this section which is directly attributable to the state department's cost of administering the testing or counseling service and to any required testing or counseling services provided by the state for plan members. The payment by the plan, as provided in this subdivision, shall be deemed to fulfill any obligation the provider or the provider's patient may have to the state department to pay a fee in connection with the testing or counseling service.

(g) The adoption of regulations pursuant to this section shall be deemed to be an emergency, and necessary for the immediate

preservation of the public peace, health, safety, and general welfare. Notwithstanding subdivision (h) of Section 11346.1 and Section 11349.6 of the Government Code, the director shall transmit regulations adopted pursuant to this section directly to the Secretary of State for filing. The regulations shall be filed by the Secretary of State as emergency regulations and shall become effective immediately.

(h) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state department pursuant to this section shall not be repealed by the Office of Administrative Law and shall remain in effect until revised or repealed by the state department.

SEC. 2. There is hereby appropriated from the unexpended balance of the Genetic Disease Testing Fund to the State Department of Health Services the sum of one hundred fifty thousand dollars ($150,000), for the 1987–88 fiscal year, in order to provide permanent staff to implement subdivision (e) of Section 309 of the Health and Safety Code, as amended by Section 1 of this act.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the Legislature will receive recommendations concerning testing for congenital disorders, at the earliest possible time, it is necessary that this act go into immediate effect.

CHAPTER 819

An act to amend Section 9321 of the Business and Professions Code, relating to polygraph examiners.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 9321 of the Business and Professions Code is amended to read:

9321. (a) The amount of fees relating to licensure pursuant to this chapter shall be as follows:

(1) The application fee is seventy-five dollars ($75).

(2) The fee for taking the qualifying examination is fifty dollars ($50). Persons failing to appear for the examination, once having been scheduled, shall forfeit any examination fee paid.

(3) The initial license fee is two hundred twenty-five dollars ($225).

(4) The reexamination fee is fifty dollars ($50).

(5) The renewal fee is two hundred twenty-five dollars ($225).

(6) The duplicate license fee is ten dollars ($10).

(7) Notwithstanding Section 163.5, the late renewal fee is fifty dollars ($50).

(8) The provider fee for continuing education course approval requests shall be set by the board at an amount not to exceed fifty dollars ($50).

(b) The sum of fifty thousand dollars ($50,000) is hereby appropriated from the General Fund to the Polygraph Examiners Fund, which sum shall be a loan to be repaid to the General Fund with interest at the rate earned by moneys invested in the Pooled Money Investment Account and which shall be repaid in the following manner:

(1) Ten thousand dollars ($10,000) shall be repaid during the 1986–87 fiscal year.

(2) The balance shall be repaid in increments of not less than ten thousand dollars ($10,000) each fiscal year, with the entire sum plus interest paid by January 1, 1990.

All moneys repaid shall be from funds collected pursuant to the Polygraph Examiners Act.

(c) The amendments to this section made by the act adding this subdivision shall become operative only if SB 1062 of the 1987–88 Regular Session is enacted and amends or repeals Section 14.5 of Chapter 1210 of the Statutes of 1984.

CHAPTER 820

An act relating to San Diego Bay.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

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

(a) San Diego Bay represents a unique and vital resource to the residents of southern California. It is one of the few natural harbors on the west coast and one of the largest and finest deep water harbors in the world. It is also the home of a variety of shellfish and offers scenic and recreational values that are important to the economic and aesthetic quality of the City of San Diego.

(b) Mankind's activities in the marine environment can have a profound short-term and long-term impact on that environment and greatly affect ocean and coastal resources therein.

(c) Both short-term and long-term threats to public health, living marine organisms, and water quality are posed by the disposal of toxic chemicals in the ocean.

(d) Low rainfall in the San Diego region, combined with the poor flushing characteristics of San Diego Bay, means that pollutants discharged into the bay have a marked and long-term effect on water quality.

(e) Recent study has shown that San Diego Bay now contains concentrations of toxic metals and carcinogenic chemicals sufficiently high to raise concerns that long-term effects on fish and other marine life may result.

(f) A recent report by the San Diego Regional Water Quality Control Board found polychlorinated biphenyls (PCB's) in Convair Lagoon at concentrations in excess of levels constituting a hazardous waste, leading to enforcement action against one party, but further investigation is needed to determine the extent of other sources of PCB's in the bay sediments.

(g) The need for further study of existing and potential water quality problems in the bay led the State Water Resources Control Board, in December 1986, to provide funding for a proposed program of research and monitoring. The study is to be a cooperative one, involving numerous governmental agencies which have an interest in pollution problems in San Diego Bay.

(h) The early identification of potential toxic pollution problems and the enforcement of water quality laws in San Diego Bay could be enhanced through increased participation by and cooperation among governmental entities and agencies. It is therefore in the best interests of all users of San Diego Bay's resources that the talents of the community be brought to bear on the problem of ensuring the future health of the bay.

(i) The San Diego Interagency Water Quality Panel, created in Section 2 of this act, shall act in an advisory capacity to assist the San Diego Regional Water Quality Control Board in its study of pollution problems in San Diego Bay. It is the intent of the Legislature that the activities of the panel be carried out in a manner which will not result in substantial costs to the regional board.

SEC. 2. (a) The San Diego Interagency Water Quality Panel is hereby created and shall consist of representatives of governmental agencies having jurisdiction over various activities involving San Diego Bay and other interested parties. The panel shall provide technical and advisory input into the activities of the San Diego Regional Water Quality Control Board in its study of water quality problems in the bay. The panel shall assist the regional board in the identification of all sources of water quality information on the bay, and assist in the development of a framework for greater coordination of these sources for rapid identification of potential water quality problems. The panel may also make recommendations for changes to state laws that are necessary to improve the quality of the waters of the bay. Members of the panel shall include, to the extent that they are available to serve on the panel, representatives of the following:

(1) The San Diego Unified Port District.

(2) The San Diego Regional Water Quality Control Board.
(3) The State Department of Health Services.
(4) The Department of Food and Agriculture.
(5) The Department of Fish and Game.
(6) The San Diego County Department of Health Services.
(7) The United States Environmental Protection Agency.
(8) The United States Fish and Wildlife Service.
(9) The National Marine Fisheries Service.
(10) The Army Corps of Engineers.
(11) The Department of the Navy.
(12) The Scripps Institution of Oceanography.
(13) Commercial users of the bay.
(14) Recreational users of the bay.
(15) Industrial users of the bay.
(16) Environmental groups with an interest in the bay.
(17) The Cities of San Diego, National City, Chula Vista, and Coronado.
(18) The California Coastal Commission.
(19) The State Lands Commission.

(b) (1) The regional board representative shall chair the panel and shall convene the panel at least twice each calendar year, including at least one meeting to review and approve the annual report required by subdivision (c). The regional board shall provide clerical and administrative support for the panel. Costs incurred by each organization represented on the panel shall be limited to the cost of its own participation at the meetings called by the chair.

(2) The governing body or the director of each agency, whichever applies, shall appoint the agency's representative to the panel. Members of the panel shall be qualified scientists with experience relevant to the marine environment or public health.

(3) The panel shall have an executive committee, consisting of the representatives of the agencies named in paragraphs (1) to (6), inclusive, of subdivision (a). The representative of the regional board shall serve as the chairperson of the executive committee. The executive committee shall meet at least once every two months to discuss the status of the regional board's study of the bay, and to review any relevant information regarding the bay brought to the panel.

(4) The executive committee shall request each agency, organization, or citizens group listed in subdivision (a) to submit its nominee to serve on the panel. A majority vote of the executive committee is required for the nominee to be approved for membership on the panel.

(c) The panel shall publish annually a report on the status of water quality in San Diego Bay, including specific findings and recommendations made during the year, and shall transmit a copy of that report to the State Water Resources Control Board.

(d) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

CHAPTER 821

An act to add and repeal Chapter 5 (commencing with Section 11890) of Part 3 of Division 2 of, and to repeal Section 674.7 of, the Insurance Code, relating to insurance.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 674.7 of the Insurance Code is repealed.

SEC. 2. Chapter 5 (commencing with Section 11890) is added to Part 3 of Division 2 of the Insurance Code, to read:

CHAPTER 5. JOINT UNDERWRITING ASSOCIATION FOR LIABILITY INSURANCE

11890. (a) If the commissioner finds after a public hearing that liability insurance for a designated class of risk is not readily available in the voluntary insurance market, and that the public interest requires this availability, the commissioner may authorize the formation of a market assistance program to assist in securing that insurance for those risks in the designated class. The commissioner may require insurers, agents, and brokers to attend public hearings and meetings concerning either the need for a market assistance program or the organization and formation of a program. The commissioner also may assist in securing insurance for risks in the designated class for which commercial liability insurance is not readily available in forming a risk pooling arrangement as permitted by the Federal Liability Risk Retention Act of 1986.

(b) The commissioner shall formulate a market assistance program giving consideration to the need for adequate and readily accessible coverage, to the needs of insureds, insurers, agents, and brokers, to the need for reasonable underwriting standards and required loss prevention measures, and to the need for minimum interference with the operation of the voluntary market. The commissioner may require insurers, agents, and brokers to assist in the formation and implementation of the market assistance program.

(c) A market assistance program shall be comprised of insurers, agents, and brokers and their participation shall be voluntary. The commissioner shall not permit an insurer to condition its participation in such a way as to be inequitable to the other insurer participants.

(d) Market assistance programs shall not be established for the following types of insurance: professional liability insurance as

defined in subdivision (b) of Section 11589, pollution liability, workers' compensation and employers' liability, product liability, ocean marine, reinsurance, any insurance defined in Section 660 or 675 unless coverage is provided by a separate rider or endorsement for an activity for which the insured receives compensation, a stipend, or remuneration of any kind for the activity and then only to the extent of the coverage, insurance available through an involuntary market mechanism, including, but not limited to, the California Automobile Assigned Risk Plan and the California Fair Plan Association, or that form of risk covered under the provisions of Public Law 97-45 (15 U.S.C. Sec. 3901 et seq.) as enacted September 25, 1981.

(e) Any plan formulated pursuant to this section shall give consideration to the need for adequate and readily accessible coverage, to alternative methods for improving the market affected, to the inherent limitations of the insurance mechanism, to the need for reasonable underwriting standards, and to the requirement of reasonable loss prevention measures.

(f) Any plan formulated pursuant to this section shall establish procedures that will create minimum interference with the voluntary market.

(g) Voluntary plans shall be submitted to the commissioner and, if approved, may be put into operation.

For the purpose of this section, liability insurance for a designated class of risk is not readily available in the voluntary insurance market, when either there is a significant decrease in the number of insurers writing that class of risk, or there is a total withdrawal by insurers from writing that class of risk.

11891. (a) If, after a public hearing, the commissioner determines that a market assistance program has failed to provide adequate liability insurance coverage, the commissioner may order the creation of an unincorporated, not-for-profit, temporary joint underwriting association for liability insurance, constituting a legal entity separate and distinct from all its members. Every insurer authorized to write and engaged in writing within this state, on a direct basis, liability insurance, including the liability portion of multiperil policies, but not including (1) ocean marine insurance (2) professional liability insurance as defined in subdivision (b) of Section 11589 or, (3) any insurance defined in Section 660 or 675 except to the extent that commercial liability coverage is provided by a separate rider or endorsement to the policy and a separate premium is charged for the coverage, shall be a member of the association and shall remain a member as a condition of its authority to continue to transact insurance in this state. The association shall not issue policies covering professional liability insurance as defined in subdivision (b) of Section 11589, workers' compensation and employers' liability, pollution liability, product liability, ocean marine, reinsurance, any insurance defined in Section 660 or 675 unless coverage is provided by a separate rider or endorsement for

an activity for which the insured receives compensation, a stipend, or remuneration of any kind for the activity and then only to the extent of the coverage, or liability coverages available through the California Automobile Assigned Risk Plan or the California Fair Plan Association.

(b) The purpose of the association is to provide a market for liability insurance on a self-supporting basis, without subsidy from association members. If the commissioner determines after public hearing that liability insurance for a designated type of risk is readily available through the voluntary market, the association shall cease its underwriting operations. In no event shall the association continue past one year from the date of its creation unless the commissioner has determined, after public hearing, the necessity for its continued existence. If the association continues in existence past one year, the commissioner shall conduct those hearings at least annually.

(c) The commissioner may hold a public hearing to determine the effectiveness of any market assistance program already in existence on January 1, 1988, in order to determine if the market assistance program has provided adequate liability insurance coverage. Based upon that determination, the commissioner may order the creation of a Joint Underwriting Association pursuant to subdivision (a) without requiring further participation in a market assistance program.

11892. The association on behalf of its members, may exercise directly, or perform by contractual delegation, all of the following:

(a) Issue or cause to be issued policies of liability insurance to applicants, including incidental coverage, subject to limits as specified in the plan.

(b) Underwrite the insurance or appoint service companies to perform those functions.

(c) Obtain reinsurance.

(d) Cede insurance.

(e) Provide for reinsurance of risks incurred by the plan, and enter in reinsurance agreements with insurers to establish a reinsurance plan for risks of coverage described in the plan.

(f) Receive, invest, and disburse funds.

(g) Open bank accounts and delegate authority for deposit, withdrawal, and disbursement of funds.

(h) Borrow funds for the association's necessary administrative expenses.

(i) Provide for fidelity and surety bonds as may be deemed necessary to transact the business of the association.

(j) Review, consider, and act on any matters it deems necessary and proper for the administration of the association.

(k) Develop, promulgate, and effectuate loss prevention programs.

(*l*) Sue and be sued; provided, however, that no judgment against the association shall create any liability in the individual member companies, and that the association may provide for the

indemnification of its member companies, members of the board of directors and officers and employees and other persons acting on behalf of the association.

11893. The administrative powers of the association shall be vested in a board of directors, appointed by the commissioner, consisting of eight members and shall include six members who have experience in the insurance field and two public members who shall serve terms as established by the plan.

11894. The association may assess each member an initial fee sufficient to insure the issuance of liability policies. The initial fee shall be reimbursed to each member at such time as is deemed prudent by the association.

11895. (a) Within 45 days following creation of the association as provided in Section 11891, the directors of the association shall submit to the commissioner for review a proposed plan of operation. The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the availability of liability insurance for designated types of risk. The plan shall contain provisions including, but not limited to, establishment of necessary facilities, management of the association, commission arrangements, reasonable and objective underwriting standards, cession of reinsurance, appointment of servicing carriers or other servicing arrangements, and procedures for determining amounts of insurance to be provided by the association.

(b) For any class of liability insurance designated to participate in the Joint Underwriting Association, the commissioner shall appoint an advisory committee composed of representatives from the designated class, which shall, within 10 days from receipt of the plan, review the proposed plan of operation and communicate in writing to the commissioner, for his or her consideration, any omissions or deficiencies in the plan.

(c) The plan of operation shall be subject to approval of the commissioner after consultation with members of the association and other affected individuals and organizations. If the commissioner disapproves all or any part of the proposed plan of operation, the directors of the association, within 15-working days, shall submit for review an appropriate revised plan of operation or part thereof. If the directors fail to do so, the commissioner shall promulgate a plan of operation or part thereof, whichever is appropriate. The plan of operation approved or promulgated by the commissioner shall become effective and operational on order of the commissioner.

(d) Amendments to the plan of operation may be made by the directors of the association, subject to the prior written approval of the commissioner.

11896. (a) All policies issued by the association shall be on a claims-made basis.

(b) All policies issued by the association shall contain a provision which guarantees the insured that the association shall issue, on the written demand of any insured to whom it has issued a claims-made

policy, a rider or endorsement to the policy providing coverage for a period not less than the term of the underlying association claims-made policy, for any acts or omissions by the insured which occurred during the same period covered by the association's claims-made policy, but excluding liability for any claim for injury or loss made to the association for which an adequate premium is charged pursuant to subdivision (d). The association shall discharge its obligation under this subdivision by offering to issue a rider or endorsement for a single term beyond the policy period of the underlying association claims-made policy.

(c) Cancellation of the association's policies shall be governed by the applicable provisions of this code for the particular type of liability coverage.

(d) All rates, rating plans, rating rules, rating classification and territories applicable to the liability insurance written by the association and statistics relating thereto shall be subject to the provisions of Chapter 9 (commencing with Section 1850) of Part 2 of Division 1. Due consideration shall be given to past and prospective loss and expense experience for the liability insurance provided, trends in the frequency and severity of losses, the investment income of the association, and any other information as the commissioner may require. All rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.

11897. (a) Upon a determination that within the next 180 days thereafter, the association will be unable to pay its outstanding lawful obligations as they mature in the regular course of business, as shown by an excess of lawful obligations over admitted assets, the association shall certify to the commissioner the existence of that condition.

(b) At the time of certification, the association shall first submit a schedule of policyholder surcharges which shall be sufficient to assure the continued sound financial operation of the association. The schedule of policyholder surcharges shall become final within 30 days after certification unless the commissioner finds that the amounts of the surcharges are unreasonable. The policyholder surcharge shall not exceed 25 percent of the total premium paid for a policy or policies obtained through the association. Upon determination by the association that the policyholder surcharge is insufficient to assure the association's continued sound financial operation, the association shall submit a schedule of insurer-member assessments. Insurer-member assessments shall become final within 30 days unless the commissioner finds that the amounts of the assessments are unreasonable. The insurer-member assessments shall not exceed 1 percent of each insurer-member's direct written premium in this state attributable to that insurance, the writing of which requires it to be a member of the association as set forth in subdivision (a) of Section 11891.

(c) (1) Upon termination of underwriting activities of the association, any person who obtained insurance through the association and who was subject to payment of a surcharge, shall

recoup a proportional share of that surcharge from the excess of assets over liabilities, which shall include all necessary administrative expenses, losses, and loss adjustment expenses and reserves, and reserves for losses incurred but not reported together with loss adjustment expenses attributable to them.

(2) If, upon termination of the underwriting activities of the association, the board of directors of the association certifies to the commissioner a deficit of assets over liabilities as defined in paragraph (1), the commissioner shall, within 60 days of that certification, authorize the association to begin recoupment of the deficit by applying a surcharge determined by the association at a rate not to exceed 2 percent of the annual premiums on future policies of that insurance, the writing of which requires the insurer to be a member of the association as set forth in subdivision (a) of Section 11891.

(d) Each insurer-member shall recoup over a reasonable length of time a sum reasonably calculated to recoup the assessments paid by the insurer-member by way of a surcharge on premimums under subdivision (c). Amounts recouped shall not be considered premiums for any other purpose, including the computation of gross premium tax or agent's commission. The amount of the surcharge shall be separately stated on either a billing or policy declaration sent to the insured. An insurer-member may omit collection of recoupment amounts from the insured when the expense of collection would exceed the amount collected. However, nothing shall relieve the insurer-member of its obligation to recoup amounts otherwise collectible.

11898. If the association determines that an appliciant meets the underwriting standards of the association as prescribed in the plan, the association, upon receipt of the premium or the portion of the premium as prescribed in the plan, shall cause a policy of liability insurance to be issued.

11899. An applicant to the association, any person insured pursuant to this chapter, or their representatives, or any affected insurer, may appeal to the commissioner within 30 days after any ruling, action, or decision by, or on behalf of the association, with respect to those items the plan of operation define as matters which may be appealed.

11900. All orders of the commissioner made pursuant to this chapter shall be subject to judicial review. However, notwithstanding any other provision of law, proceedings for review shall not act as a stay of the enforcement of any order or decision of the commissioner disapproving or ordering the withdrawal, adjustment, or termination of the effectiveness of any rate filing made by or on behalf of the association on the ground that the rates or premiums for the business of the association are unreasonable or excessive.

11901. Annually, on or before March 1, the association shall file in the office of the commissioner a statement which contains

information with respect to its transactions, condition, operations, and affairs during the preceding calendar year. The statement shall contain those matters and information as are prescribed and shall be in a form approved by the commissioner. The additional information with respect to its transactions, condition, or any matter connected with its transactions and condition considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

11902. The commissioner shall make an examination of the affairs of the association at least annually and at any other time the commissioner deems advisable. The examination shall be conducted and the report thereon filed in the manner prescribed in Article 4 (commencing with Section 730) of Chapter 1 of Part 2 of Division 1. The expenses of the examination shall be borne and paid by the association.

11903. There is no liability on the part of and no cause of action of any nature shall arise against, the association or its members, the commissioner or his or her authorized representatives or any other person or organization, for any statements, acts, or omissions made in good faith by them during any proceedings or concerning any matters within the scope of this chapter.

11904. Dissolution of the association, including its assets and liabilities, shall be accomplished under the supervision of the commissioner.

11905. The association shall not be a member of the California Insurance Guarantee Association, nor shall that association be otherwise responsible for losses sustained by the association.

11906. This chapter shall remain in effect only until December 31, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before December 31, 1994 deletes or extends that date.

CHAPTER 822

An act to amend Sections 25178 and 25200.5 of, and to add Sections 25200.7 and 25200.8 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 25178 of the Health and Safety Code is amended to read:

25178. On or before January 1st of each odd-numbered year, the department shall prepare and submit to the Legislature a report containing, but not limited to, the following:

(a) The status of the regulatory and program developments required pursuant to legislative mandates.

(b) The status of the hazardous waste facilities permit program which shall include all of the following information:

(1) A description of the final hazardous waste facilities permit applications received.

(2) The number of final hazardous waste facilities permits issued to date.

(3) The number of final hazardous waste facilities permits yet to be issued.

(4) A complete description of the reasons why the final hazardous waste facilities permits yet to be issued have not been issued.

For purposes of this subdivision, "hazardous waste facility" means a facility which uses a land disposal method, as defined in subdivision (h) of Section 25179.3, and which disposes of wastes regulated as hazardous waste pursuant to the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

(c) The status of the hazardous waste facilities siting program.

(d) The status of the hazardous waste abandoned sites program.

(e) A summary of enforcement actions taken pursuant to this chapter and any other actions relating to hazardous waste management.

(f) Summary data on annual quantities and types of hazardous waste generated, transported, treated, stored, and disposed.

(g) Summary data regarding onsite and offsite disposition of hazardous waste.

(h) Research activity initiated by the department.

(i) Regulatory action by other agencies relating to hazardous waste management.

(j) Any other data considered pertinent by the department to hazardous waste management.

SEC. 2. Section 25200.5 of the Health and Safety Code is amended to read:

25200.5. (a) Except as provided in Section 25200.7, any person who desires to continue use or operation of a hazardous waste facility pending the review and decision of the department on the permit application, may be granted interim status by the department if the person has made application for a permit pursuant to Section 25200.

(b) The person operating under an interim status pursuant to this section shall not do any of the following acts:

(1) Treat, store, or dispose of hazardous wastes which are not specified in Part A of the permit application.

(2) Employ processes not described in Part A of the permit application.

(3) Exceed the design capacities specified in Part A of the permit application.

(c) A facility operating under interim status is not subject to civil or criminal penalties for operating without a permit, but is otherwise subject to this chapter and the rules, regulations, standards, and

requirements issued or adopted pursuant to this chapter. Interim status may be granted subject to any conditions which the department deems necessary to protect public health or the environment. Interim status shall not be valid beyond the date of the decision of the department on the permit application.

(d) The department shall not grant interim status to any person to operate a hazardous waste facility if the department has previously taken any of the following actions:

(1) Denied a hazardous waste facilities permit for the facility.

(2) Suspended or revoked the hazardous waste facilities permit for the facility.

(3) Terminated a grant of interim status for the facility.

(e) For purposes of this section, "Part A of the permit application" has the same meaning as defined in Section 66151 of Title 22 of the California Administrative Code.

SEC. 3. Section 25200.7 is added to the Health and Safety Code, to read:

25200.7. (a) On or before November 8, 1988, the department shall take final action on each application for a hazardous waste facilities permit submitted to the department before January 1, 1988, by either issuing a final permit pursuant to the application or a final denial of the application.

(b) Subdivision (a) applies only to hazardous waste facilities which are operating under a grant of interim status on January 1, 1988, which use a land disposal method, as defined in subdivision (h) of Section 25179.3, and which dispose of wastes regulated as hazardous waste pursuant to the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

SEC. 4. Section 25200.8 is added to the Health and Safety Code, to read:

25200.8. Any applicant for a final hazardous waste facilities permit pursuant to Section 25200 who receives a notice of deficiency from the department concerning the permit application shall submit the information specified in the notice of deficiency, to the extent that the information is required by statute or regulation, by a reasonable date specified in the notice or by a later alternative date approved by the department. The department may initiate an enforcement action pursuant to Section 25187 or 25189.3 against any hazardous waste facilities permit applicant who does not provide the information specified in the notice of deficiency, to the extent that the information is required by statute or regulation, by a reasonable date specified in the notice of deficiency or a later alternative date approved by the department. If an applicant does not respond to three or more of these notices of deficiency regarding the same or different deficiencies or responds with substantially incomplete or substantially unsatisfactory information on three or more occasions, and the applicant has failed to provide the information which is required by statute or regulation and is reasonably requested by the department, the department shall, pursuant to Sections 25186 and

25186.1, initiate proceedings to deny the permit application. This section does not limit the department's authority, under any other provision of law, to take action concerning delinquent, incomplete, or unsatisfactory responses to notices of deficiency.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 823

An act to amend Section 87613 of the Education Code, relating to education.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 87613 of the Education Code is amended to read:

87613. (a) In any community college district, the percentage of weekly faculty contact hours taught by part-time instructors shall not exceed the three-year district average of weekly faculty contact hours taught by part-time instructors during the 1980–81, 1981–82, and 1982–83 academic years.

(b) If in any academic year a district exceeds by more than 1 percent the percentage of weekly faculty contact hours taught by part-time instructors specified in subdivision (a), the district shall, by February 1 of that academic year, submit a plan for compliance for the next academic year to the Board of Governors of the California Community Colleges. The plan shall be developed with the involvement of the appropriate faculty representative. The board of governors may approve the plan for compliance only after reviewing the feasibility of the plan at a regular meeting. The district shall comply with the requirements of subdivision (a) in the next academic year.

(c) For purposes of this section, "part-time instructor" means an instructor who is employed to teach adult or community college classes for not more than 60 percent of the hours per week considered a full-time assignment.

(d) The provisions of this section shall not apply to any community college district in which the weekly faculty contact hours taught by part-time instructors do not exceed 30 percent.

(e) This section shall become inoperative on July 1, 1989, and, as of January 1, 1990, is repealed, unless a later enacted statute, which

becomes effective on or before January 1, 1990, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Notwithstanding Sections 84043 to 84046, inclusive, of the Education Code, any emergency apportionments authorized by the Legislature for community college districts prior to July 1, 1987, shall be governed by Article 2 (commencing with Section 84309) of Chapter 3 of Part 50 of the Education Code as they existed on December 31, 1986.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 824

An act to add Chapter 2.6 (commencing with Section 1954.25) to Title 5 of Part 4 of Division 3 of the Civil Code, relating to real property.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. This act shall be known and may be cited as the Costa-Keene-Seymour Commercial Property Investment Act of 1987.

SEC. 2. Chapter 2.6 (commencing with Section 1954.25) is added to Title 5 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 2.6. COMMERCIAL RENTAL CONTROL

1954.25. The Legislature finds that the price charged for commercial real property is a matter of statewide concern. Price controls on commercial rents discourage expansion of commercial development and entrepreneurial enterprise. These controls also discourage competition in the open market by giving artificial price benefits to one enterprise to the disadvantage of another. Because the impact of these controls goes beyond the local boundaries within which the controls are imposed, the adverse economic consquences become statewide.

In order to prevent this statewide economic drain from occurring, the Legislature hereby enacts a uniform system with respect to

commercial rents, which shall apply to every local jurisdiction in the state. This legislative action is needed to prevent the imposition of artificial barriers on commercial rents, as well as to define those areas not included within the definition of commercial real property.

In making these findings and in enacting this chapter, the Legislature expressly declares its intent that this chapter shall not apply or be interpreted to apply to local rental controls on residential real property.

1954.26. As used in this chapter, the following terms have the following meanings:

(a) "Owner" includes any person, acting as principal or through an agent, having the right to offer commercial real property for rent, and includes any predecessor in interest to the owner.

(b) "Price" includes any charge or fee, however denominated, for the hiring of commercial real property and includes any security or deposit subject to Section 1950.7.

(c) "Public entity" has the same meaning as defined in Section 811.2 of the Government Code.

(d) "Commercial real property" includes any part, portion, or unit thereof, and any related facilities, space, or services, except the following:

(1) Any dwelling or dwelling unit subject to the provisions of Section 1940.

(2) Any accommodation in any residential hotel, as defined in Section 50519 of the Health and Safety Code, or comparable accommodations which are specifically regulated by a public entity in structures where 20 percent or more of the accommodations are occupied by persons as their primary residence.

(3) Any hotel unit not otherwise specified in paragraph (1) or (2) that is located in a structure with 20 or more units or in which 20 percent or more of the accommodations were occupied as of August 5, 1987, by persons as their primary residence, if, in either circumstance, the unit was subject to rental controls on August 5, 1987, provided that any control exercised thereafter is in accordance with the system of controls in effect on August 5, 1987.

(4) Any space or dwelling unit in any mobilehome park, as defined in Section 18214 of the Health and Safety Code.

(e) "Rent" means to hire real property and includes a lease or sublease.

(f) "Commercial rental control" includes any action of a public entity taken by statute, charter, ordinance, resolution, administrative regulation, or any other governmental enactment to establish, continue, implement, or enforce any control or system of controls, on the price at which, or the term for which, commercial real property may be offered for rent, or control or system of controls which would select, mandate, dictate, or otherwise designate a specific tenant or specific person or entity with whom the owner must negotiate on the formation, extension, or renewal of a tenancy; or any other enactment which has such a purpose.

(g) "Tenant" includes a lessee, subtenant, and sublessee.

(h) "Term" means the period of time for which real property is rented or offered for rent, and includes any provision for a termination or extension of such a period or renewal thereof, except that nothing in this chapter supersedes the specific provisions of this code or of the Code of Civil Procedure which of themselves establish, prescribe, limit, or define the term for which real property may be rented.

(i) "Impasse notice" means a written notice which states either of the following:

(1) That the owner has not received from the tenant an offer of any terms for an extension or renewal of the lease which are acceptable to the owner, or an acceptance by the tenant of any offer of terms by the owner, and that an impasse with respect to any agreement on a lease extension or renewal has been reached.

(2) That the owner is not willing to extend or renew the lease.

(j) "Negotiation notice" means a written notice by a tenant in privity of estate, and in privity of contract with the owner, stating either of the following:

(1) That the tenant offers to extend or renew the lease on terms set forth in the notice.

(2) That the tenant solicits an offer for the extension or renewal of the lease from the owner.

(k) "Deliver" means to deliver by personal service or by placing a copy of the notice in the mail, postage prepaid, by certified mail, return receipt requested, addressed to the party at the address for the receipt of notices under the lease.

(*l*) "Developer" means any person who enters into an agreement with a redevelopment agency for the purpose of developing specific commercial real property within a redevelopment project area with the intention of acquiring ownership of that property, even if that person does not own that property when the agreement is executed.

1954.27. (a) No public entity shall enact any measure constituting commercial rental control, nor shall any public entity enforce any commercial rental control, whether enacted prior to or on or after January 1, 1988.

(b) However, nothing in this chapter shall be construed to do any of the following:

(1) Relieve any party to a commercial lease or rental agreement of the duty to perform any obligation thereunder.

(2) Preclude express establishment in a commercial lease or rental agreement of the price at which real property may be offered to a subtenant or sublessee.

(3) Impair any obligation of any contract entered into prior to January 1, 1988.

(4) Affect any provision of, or requirement for mitigation of damages under, Sections 1951 to 1952.6, inclusive.

(5) Limit any adjustment of price required or permitted by law due to constructive eviction.

(6) Enlarge or diminish in any way any power which a public entity may have with respect to regulation of rental rates or the ownership, conveyance, or use of any property specified in paragraph (1), (2), or (3) of subdivision (d) of Section 1954.26.

(7) Relieve any party of any requirement or mandate to arbitrate, or deprive any party of any right to arbitrate or compel arbitration, which mandate or right exists pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, titled "Arbitration," Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, titled "Judicial Arbitration," Title 1 (commencing with Section 1823) of Part 3 of the Code of Civil Procedure, titled "Pilot Projects," or any other provision of state law.

(8) Affect in any way, or preclude the inclusion of, any provision in a lease creating any lawful option, right of first refusal, or any covenant to renew or extend the lease or sell the real property or any interest therein.

(9) Relieve any person of any duty or deprive any person of any right or cause of action which may exist pursuant to Section 51, 53, or 782.

1954.28. Nothing in this chapter limits or affects public entities with respect to any of the following:

(a) The Eminent Domain Law, Title 7 (commencing with Section 1230.10) of Part 3 of the Code of Civil Procedure.

(b) Abatement of nuisances. However, except as to conditions expressly defined as nuisances by statute, authority to abate or bring actions to abate nuisances shall not be used to circumvent the limitations of this chapter with respect to conditions not manifesting the quantum and character of unreasonableness and injuriousness to constitute a nuisance under law.

(c) The Airport Approaches Zoning Law, Article 6.5 (commencing with Section 50485) of Chapter 2 of Part 1 of Division 1 of Title 5 of the Government Code.

(d) Any contract or agreement by which an owner agrees with a public entity to offer any real property for rent at a stipulated or maximum price or under a specified formula for ascertaining a stipulated or maximum price, in consideration for a direct financial contribution; any written contract between a redevelopment agency and an owner or developer of commercial real property within a redevelopment project area; or any written development agreement entered into pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 of Title 7 of the Government Code. Any contract or agreement specified in this subdivision is not enforceable against an owner who became an owner (1) without actual knowledge of the contract or agreement, and (2) more than 30 days prior to the recording with the county recorder of a written memorandum of the contract or agreement specifically describing its terms and identifying the real property and the owner. The county recorder shall index these memorandums in the

grantor-grantee index.

(e) Article 2 (commencing with Section 5020) of Chapter 1 of Division 5 of the Public Resources Code, relating to historical resources.

(f) The Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code.

(g) Any contract or agreement entered into by a public entity relating to the transfer, lease, or license of commercial real property owned or leased by that public entity, except any requirement enacted pursuant to Section 1954.31.

1954.29. Nothing in this chapter shall, with respect to a public entity:

(a) Grant, enlarge, or diminish any power (1) which it may possess under the provisions of, and for the purposes of, Division 1 (commencing with Section 65000) of Title 7 of the Government Code, (2) with respect to charter cities, planning, or zoning powers granted under Section 5 of Article XI of the California Constitution, or (3) any power which it may possess to mitigate the impact caused by the construction, reconstruction, demolition, or alteration of the size of any commercial real property. However, this subdivision does not apply to any actions taken for the clear or systematic purpose of circumventing this chapter.

(b) Grant, repeal, enlarge, or diminish any authority to require a business license, whether for regulation or revenue.

1954.30. Nothing in this chapter grants or augments any authority of a public entity which it does not possess independent of this chapter, nor diminish any power of a public entity except as expressly provided in this chapter.

1954.31. A public entity may by enactment of a statute, charter or charter amendment, or ordinance, establish a requirement for notice relating to the termination of a lease of commercial real property due to the expiration of its term.

(a) The enactment shall contain provisions dealing with any or all of the following:

(1) The delivery of a negotiation notice by a tenant.

(2) A requirement for an owner to deliver an impasse notice at any time after delivery of the negotiation notice, except that:

(A) The requirement shall be inapplicable unless the tenant has been required to deliver a negotiation notice not less than 270 days before the expiration of the lease, and has done so.

(B) The mandate for delivery of an impasse notice shall not occur earlier than 180 days before expiration of the lease.

(C) No impasse notice shall be required if the parties have executed a renewal or extension of the lease.

(D) Provision shall be made that the notice will include, in a form of type which will distinguish it from the body of the text of the balance of the notice, a disclosure reading, either:

(i) The giving of this notice does not necessarily preclude further dialogue or negotiation on an extension or renewal of the lease if the

parties choose to negotiate, but the delivery of this notice discharges all obligations of _____ (the owner) under provisions of _____ (the enactment) and Section 1954.31 of the Civil Code; or

(ii) By giving this notice _____ (the owner) declares that he or she does not intend to negotiate further on any extension or renewal of the lease.

(3) Establish that a bad faith failure to comply with the enactment is subject to a remedy for actual damages.

(4) Any remedy under the enactment or Section 1954.31 shall be available only by an action brought by the owner or the tenant.

(b) The enactment shall contain (or shall be deemed to contain), a provision that:

(1) A tenant may not exercise any right pursuant to the enactment or this chapter, unless the tenant has performed the terms of the lease in such manner as would entitle the tenant to exercise any option he or she might possess under the lease.

(2) No right or cause of action accruing to a tenant pursuant to the enactment or this chapter, may be assigned other than to a person who is a lawful assignee of the lease, is in lawful possession of the premises under the lease, and is in compliance with paragraph (1).

(3) Nothing in the enactment or this chapter creates or imposes, nor shall be construed to create or impose, a duty to extend or renew, or to negotiate on an extension or renewal, of any lease; nor shall the delivery or receipt of any notice provided for by the enactment or by this chapter, constitute a waiver of any rights to continued performance under the covenants under the lease or to actions for possession.

(4) The delivery of any notice pursuant to the enactment or this chapter shall create a rebuttable presumption affecting the burden of proof, that the notice has been properly given.

(c) No enactment shall provide, or be deemed to provide:

(1) For any extension of the term of any lease without the mutual, written consent of the owner and the tenant.

(2) For any requirement on either party to offer to extend or renew or to negotiate an extension or renewal of the lease.

(3) Bar any action brought to recover possession whether by ejectment, unlawful detainer, or other lawful means.

(4) Any remedy under the enactment or this chapter, other than that which may be provided pursuant to paragraph (3) of subdivision (a).

(d) The provisions of any enactment adopted pursuant to this section shall not apply to:

(1) Any lease or rental agreement which is not in writing, which constitutes a tenancy at will, which is for a term of less than one year or for an unspecified term, which is a month-to-month tenancy or a tenancy at sufferance.

(2) Any lease, the term of which expires within 270 days after the effective date of the enactment.

CHAPTER 825

An act to amend Sections 3322, 3327.5, and 3353 of the Business and Professions Code, relating to hearing aid dispensers, and making an appropriation therefor.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 3322 of the Business and Professions Code is amended to read:

3322. The committee shall elect annually from its membership a chairperson and a vice chairperson who shall hold office for one year or until the election and qualification of a successor.

SEC. 2. Section 3327.5 of the Business and Professions Code is amended to read:

3327.5. On and after January 1, 1980, all holders of licenses to sell or fit hearing aids shall continue their education after receiving the license. The committee shall provide by regulation, as a condition to the renewal of a license, that licensees shall submit documentation satisfactory to the committee that they have informed themselves of current practices related to the fitting of hearing aids by having pursued courses of study satisfactory to the committee or by other means defined as equivalent by the committee.

Continuing education courses shall be subject to monitoring to ensure compliance with the regulations adopted by the committee pursuant to this section.

SEC. 3. Section 3353 of the Business and Professions Code is amended to read:

3353. The committee shall ascertain that the applicant satisfies all of the following requirements:

(a) A written examination compiled at the discretion of the committee covering all of the following areas as they pertain to the fitting or selling of hearing aids:

(1) Basic physics of sound.

(2) The anatomy and physiology of the ear; and the pathology of the ear as it relates to hearing aid fitting.

(3) The function of hearing aids.

(4) Hearing aid evaluation.

(5) Knowledge and understanding of this chapter and the regulations adopted pursuant to it.

(b) A demonstration of proficiency compiled at the discretion of the committee, including but not limited to the following:

(1) The procedures and use of equipment established by the committee for the fitting or selling of hearing aids.

(2) The techniques for taking earmold impressions.

(c) Evidence of knowledge regarding the medical and

rehabilitation facilities for children and adults that are available in the area served.

(d) Has not committed acts or crimes constituting grounds for denial of licensure under Section 480.

SEC. 4. The sum of nineteen thousand ($19,000) is hereby appropriated from the Hearing Aid Dispensers Fund for the purpose of implementing Section 3327.5 and Section 3353 of the Business and Professions Code.

CHAPTER 826

An act to amend Sections 4992, 4992.5, 4996.3, 4996.4, and 4996.6 of, to amend and renumber Section 4996.18 of, and to repeal and add Section 4992.3 of, the Business and Professions Code, relating to social workers, and making an appropriation therefor.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 4992 of the Business and Professions Code is amended to read:

4992. Every applicant for a license under this chapter shall file an application with the board accompanied by the application fee prescribed by this chapter. Every application received after January 1, 1988, shall also be accompanied by the examination fee prescribed by this chapter.

The application shall contain information showing that the applicant has all the qualifications required by the board for admission to the examination.

SEC. 2. Section 4992.3 of the Business and Professions Code is repealed.

SEC. 3. Section 4992.3 is added to the Business and Professions Code, to read:

4992.3. The board may refuse to issue an apprentice registration or a license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty

or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter is a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration 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 Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4211, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person who uses or offers to use drugs in the course of performing clinical social work. This provision does not apply to any person also licensed as a physician and surgeon under Chapter 5 (commencing with Section 2000) or the Osteopathic Act who lawfully prescribes drugs to a patient under his or her care.

(d) Gross negligence or incompetence in the performance of clinical social work.

(e) Violating, attempting to violate, or conspiring to violate this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a clinical social worker.

(*l*) Performing, or holding one's self out as being able to perform, or offering to perform or permitting, any apprentice or intern under supervision to perform any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner which is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any apprentice or intern by any licensee that violates this chapter or any rules or regulations adopted by the board.

SEC. 4. Section 4992.5 of the Business and Professions Code is amended to read:

4992.5. Examinations may be held at those times and places as the board may determine. However, one examination shall be held during each calendar year.

The board may make arrangements with organizations furnishing

examination materials as it may deem desirable.

SEC. 5. Section 4996.3 of the Business and Professions Code is amended to read:

4996.3. Each application for original licensure received on or after January 1, 1988, shall be accompanied by an application fee of eighty dollars ($80) and an examination fee of fifty dollars ($50), which shall be deposited by the board into the State Treasury to the credit of the Behavioral Science Examiners Fund.

SEC. 6. Section 4996.4 of the Business and Professions Code is amended to read:

4996.4. Notwithstanding the provisions of Section 4996.3, an applicant who has failed the examination may apply for reexamination upon payment of a reexamination fee of fifty dollars ($50) if he or she applies within the 12-month period subsequent to failure of the examination. Persons failing to appear for reexamination, once having been scheduled, shall forfeit any reexamination fees paid.

SEC. 7. Section 4996.6 of the Business and Professions Code is amended to read:

4996.6. (a) A renewal fee in the sum of forty dollars ($40) shall be charged and collected on a biennial basis by the board in accordance with the provisions of Section 152.6. The fees shall be deposited in the State Treasury to the credit of the Behavioral Science Examiners Fund. The renewal fee for applications received on or after January 1, 1988, shall be sixty dollars ($60).

(b) If the license is renewed more than 30 days after its expiration, the licensee shall, as a condition precedent to renewal, also pay a delinquency fee in the amount of twenty-five dollars ($25).

Any person who permits his or her license to become delinquent may have it restored only upon the payment of all fees which he or she would have paid if the license had not become delinquent, plus the payment of any and all delinquency fees.

SEC. 8. Section 4996.18 of the Business and Professions Code is amended and renumbered to read:

4996.19. Nothing in this article shall prohibit the acts or practices of a licensed clinical social workers' corporation duly certificated pursuant to the Moscone-Knox Professional Corporation Act, as contained in Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code and Article 5 (commencing with Section 4998), when the corporation is in compliance with (a) the Moscone-Knox Professional Corporation Act; (b) Article 5 (commencing with Section 4998); and (c) all other statutes and all rules and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

CHAPTER 827

An act to amend Sections 9306 and 9313 of, and to add Section 9307.1 to, the Business and Professions Code, and to amend Section 14.5 of Chapter 1210 of the Statutes of 1984, relating to polygraph examiners.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 9306 of the Business and Professions Code is amended to read:

9306. (a) To become an intern, an applicant shall satisfy subdivisions (a) and (b) of Section 9307.

(b) To receive a general license, an applicant shall satisfy subdivisions (a) to (d), inclusive, of Section 9307. An intern shall receive a general license upon satisfaction of subdivisions (c) and (d) of Section 9307 and after having successfully completed a prorated number of hours in polygraph training of the kind approved by the board equal to that which would be required if the intern were renewing his or her intern license on the date of his or her application. The board shall require such proof as is necessary to establish satisfaction of the additional requirements.

SEC. 1.5. Section 9307.1 is added to the Business and Professions Code, to read:

9307.1. An intern shall not conduct any polygraph examination unless he or she is supervised by a qualified general licensee. An intern's license shall be automatically invalidated if the intern-supervisor relationship is severed and the intern does not obtain a replacement supervisor within 30 days. The intern shall immediately surrender his or her license upon receipt of written notification of the invalidation by the board. An intern license invalidated pursuant to this section may be reinstated upon proof to the board that the intern has obtained a replacement supervisor.

SEC. 2. Section 9313 of the Business and Professions Code is amended to read:

9313. (a) The board may refuse to issue or may revoke or suspend the license of any person as a polygraph examiner or intern on proof the person has done any of the following:

(1) Failed to inform an individual being examined as to the nature of the examination or failed to advise the individual or his or her representative, or the representative of the requesting agency, of the results of the examination.

(2) Failed to inform an individual being examined that his or her participation in the examination is voluntary, except as provided in Section 432.2 of the Labor Code.

(3) Made a material misstatement in his or her application for an

original or renewal license under this chapter.

(4) Willfully disregarded or violated any provisions of this chapter or any regulation adopted pursuant thereto, including, but not limited to, the willful making of a false report of a polygraph examination.

(5) Has demonstrated physical or emotional inability or incompetency to carry out the duties of a polygraph examiner.

(6) Has permitted a license granted to him or her under this chapter to be used by another person.

(7) Has willfully aided or abetted any violation of this chapter or any regulation adopted pursuant thereto.

(8) Has failed to provide any information requested by the board after the receipt by the board of a complaint alleging that the person has violated a provision of this chapter or any regulation adopted pursuant thereto.

(9) If the applicant or holder of any license has committed any crime or act constituting grounds for denial, suspension, or revocation under the provisions of Division 1.5 (commencing with Section 475).

(10) Has been negligent or incompetent in administering a polygraph examination.

(11) Has engaged in unprofessional conduct that is substantially related to the qualifications, functions, or duties of a polygraph examiner.

(b) Any allegation of misconduct committed or alleged to have been committed by any person acting as an agent of this state or any political subdivision thereof, shall be referred to the Attorney General for investigation. The Attorney General shall forward the results of the investigation to the board for appropriate action.

SEC. 3. Section 14.5 of Chapter 1210 of the Statutes of 1984 is amended to read:

Sec. 14.5. Chapter 17.6 (commencing with Section 9300) of Division 3 of the Business and Professions Code shall remain in effect until January 1, 1990, and on that date is repealed unless a later enacted statute that becomes effective on or before January 1, 1990, deletes or extends that date. The Polygraph Examiners Board shall submit a report of its activities to the Governor and the Legislature on or before June 30, 1989.

CHAPTER 828

An act to amend Sections 7, 72, 138, 186.2, 186.9, 198, 241, 241.2, 243, 243.2, 243.4, 243.5, 273b, 273c, 273.81, 273.82, 281, 282, 330.8, 331, 337b, 337c, 337.1, 350, 382.5, 384i, 396.5, 414, 426, 506a, 526, 538, 579, 583, 590a, 597d, 597n, 633, 641, 647, 647b, 665, 690, 691, 704, 737, 830.7, 869, 870, 881, 882, 903, 938.3, 949, 998, 1001, 1026, 1073, 1076, 1101, 1154, 1170.1, 1170.7, 1201, 1202, 1202a, 1203, 1203.055, 1203.06, 1203.075, 1203.09, 1203.2a, 1203.5, 1208, 1215, 1278, 1280a, 1287, 1302, 1310, 1330, 1332, 1347, 1360, 1364, 1381, 1383, 1386, 1411, 1463.5, 1463.22, 1538.5, 1547, 1549, 1549.1, 1550, 1551.1, 1601, 2037, 2041, 2043.5, 2045.1, 2045.6, 2046.1, 2046.6, 2048.6, 2049.6, 2060, 2084, 2601, 2622, 2680, 2691, 2880, 2884, 2900, 3405, 3417, 3704.5, 4011.6, 4015, 4028, 4104, 4465.3, 4530, 4851, 4852.03, 4852.15, 4852.17, 4853, 4854, 5005, 5051, 5058, 5059, 5061, 5062, 5064, 5068.5, 5076.2, 5082, 6001, 6003, 6004, 6029, 6035, 6054, 6082, 6106, 6207, 6301, 10000, and 10003 of, to amend and renumber Sections 67½, 650½, and 653½ of, to repeal Sections 136½, 344, 361, 384g, 398, 500, 599d, 606, 1463.01, 1613, 2653, 2654, 2655, 3051, 5066, and 6052 of, and to repeal Title 11.5 (commencing with Section 422) of Part 1 of, the Penal Code, and to amend Section 676 of the Welfare and Institutions Code, relating to crimes.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 7 of the Penal Code is amended to read:

7. Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; the word "county" includes "city and county"; writing includes printing and typewriting; oath includes affirmation or declaration; and every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written one in the term "depose"; signature or subscription includes mark, when the person cannot write, his or her name being written near it, by a person who writes his or her own name as a witness; provided, that when a signature is made by mark it must, in order that the same may be acknowledged or serve as the signature to any sworn statement, be witnessed by two persons who must subscribe their own names as witnesses thereto.

The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any

advantage.

2. The words "neglect," "negligence," "negligent," and "negligently" import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

3. The word "corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

4. The words "malice" and "maliciously" import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

5. The word "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission.

6. The word "bribe" signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his or her action, vote, or opinion, in any public or official capacity.

7. The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats, canalboats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons, except that, as used in Sections 192.5 and 193.5, the word "vessel" means a vessel as defined in subdivision (c) of Section 651 of the Harbors and Navigation Code.

8. The words "peace officer" signify any one of the officers mentioned in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

9. The word "magistrate" signifies any one of the officers mentioned in Section 808.

10. The word "property" includes both real and personal property.

11. The words "real property" are coextensive with lands, tenements, and hereditaments.

12. The words "personal property" include money, goods, chattels, things in action, and evidences of debt.

13. The word "month" means a calendar month, unless otherwise expressed; the word "daytime" means the period between sunrise and sunset, and the word "nighttime" means the period between sunset and sunrise.

14. The word "will" includes codicil.

15. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer, and the word "process" a writ or summons issued in the course of judicial proceedings.

16. Words and phrases must be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and

appropriate meaning in law, must be construed according to such peculiar and appropriate meaning.

17. Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

18. When the seal of a court or public officer is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, or by the scroll of a pen, or by writing the word "seal" against his or her name.

19. The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words "United States" may include the district and territories.

20. The word "section," whenever hereinafter employed, refers to a section of this code, unless some other code or statute is expressly mentioned.

21. To "book" signifies the recordation of an arrest in official police records, and the taking by the police of fingerprints and photographs of the person arrested, or any of these acts following an arrest.

SEC. 2. Section 67½ of the Penal Code is amended and renumbered to read:

67.5. Every person who gives or offers as a bribe to any ministerial officer, employee, or appointee of the State of California, county or city therein or political subdivision thereof, any thing the theft of which would be petty theft is guilty of a misdemeanor; if the theft of the thing so given or offered would be grand theft the offense is a felony.

SEC. 3. Section 72 of the Penal Code is amended to read:

72. Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, city, or district board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is punishable either by imprisonment in the county jail for a period of not more than one year, by a fine of not exceeding one thousand dollars ($1,000), or by both such imprisonment and fine, or by imprisonment in the state prison, by a fine of not exceeding ten thousand dollars ($10,000), or by both such imprisonment and fine.

As used in this section "officer" includes a "carrier," as defined in subdivision (a) of Section 14124.70 of the Welfare and Institutions Code, authorized to act as an agent for a state board or officer or a county, city, or district board or officer, as the case may be.

SEC. 4. Section 136½ of the Penal Code is repealed.

SEC. 5. Section 138 of the Penal Code is amended to read:

138. (a) Every person who gives or offers or promises to give to any witness or person about to be called as a witness, any bribe upon

any understanding or agreement that the person shall not attend upon any trial or other judicial proceeding, or every person who attempts by means of any offer of a bribe to dissuade any person from attending upon any trial or other judicial proceeding, is guilty of a felony.

(b) Every person who is a witness, or is about to be called as such, who receives, or offers to receive, any bribe, upon any understanding that his or her testimony shall be influenced thereby, or that he or she will absent himself or herself from the trial or proceeding upon which his or her testimony is required, is guilty of a felony.

SEC. 6. Section 186.2 of the Penal Code, as amended by Section 29.5 of Chapter 1044 of the Statutes of 1986, is amended to read:

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, 67.5, and 68.

(3) Child pornography or exploitation, as defined in subdivision (b) of Section 311.2, or Section 311.3 or 311.4, which may be prosecuted as a felony.

(4) Felonious assault, as defined in Section 245.

(5) Embezzlement, as defined in Sections 424 and 503.

(6) Extortion, as defined in Section 518.

(7) Forgery, as defined in Section 470.

(8) 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.

(9) Kidnapping, as defined in Section 207.

(10) Mayhem, as defined in Section 203.

(11) Murder, as defined in Section 187.

(12) Pimping and pandering, as defined in Section 266.

(13) Receiving stolen property, as defined in Section 496.

(14) Robbery, as defined in Section 211.

(15) Solicitation of crimes, as defined in Section 653f.

(16) Grand theft, as defined in Section 487.

(17) Trafficking in controlled substances, as defined in Sections 11351, 11351.5, 11352, and 11353 of the Health and Safety Code.

(18) Violation of the laws governing corporate securities, as defined in Section 25541 of the Corporations Code.

(19) Any of the offenses contained in Chapter 7.5 (commencing with Section 311) of Title 9, relating to obscene matter, or in Chapter 7.6 (commencing with Section 313) of Title 9, relating to harmful matter which may be prosecuted as a felony.

(20) Presentation of a false or fraudulent claim, as defined in Section 556 of the Insurance Code.

(21) Money laundering, as defined in Section 186.10.

(22) 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, gambling, and pornography 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.

This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1992, pursuant to Section 9611 of the Government Code, Section 186.2 of the Penal Code, as amended by Section 2 of Chapter 1205 of the Statutes of 1985, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 7. Section 186.2 of the Penal Code, as amended by Section 2 of Chapter 1205 of the Statutes of 1985, is amended to read:

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, 67.5, and 68.

(3) Child pornography or exploitation, as defined in subdivision

(b) of Section 311.2, or Section 311.3 or 311.4, which may be prosecuted as a felony.

(4) Felonious assault, as defined in Section 245.

(5) Embezzlement, as defined in Sections 424 and 503.

(6) Extortion, as defined in Section 518.

(7) Forgery, as defined in Section 470.

(8) 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.

(9) Kidnapping, as defined in Section 207.

(10) Mayhem, as defined in Section 203.

(11) Murder, as defined in Section 187.

(12) Pimping and pandering, as defined in Section 266.

(13) Receiving stolen property, as defined in Section 496.

(14) Robbery, as defined in Section 211.

(15) Solicitation of crimes, as defined in Section 653f.

(16) Grand theft, as defined in Section 487.

(17) Trafficking in controlled substances, as defined in Sections 11351, 11352, and 11353 of the Health and Safety Code.

(18) Violation of the laws governing corporate securities, as defined in Section 25541 of the Corporations Code.

(19) Any of the offenses contained in Chapter 7.5 (commencing with Section 311) of Title 9, relating to obscene matter, or in Chapter 7.6 (commencing with Section 313) of Title 9, relating to harmful matter which may be prosecuted as a felony.

(20) Presentation of a false or fraudulent claim, as defined in Section 556 of the Insurance Code.

(21) 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, gambling, and pornography 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.

SEC. 7.5. Section 186.9 of the Penal Code is amended to read:

186.9. As used in this chapter:

(a) "Conducts" includes, but is not limited to, initiating, concluding, or participating in conducting, initiating, or concluding a transaction.

(b) "Financial institution" means, when located or doing business in this state, any national bank or banking association, state bank or banking association, commercial bank or trust company organized under the laws of the United States or any state, any private bank, industrial savings bank, savings bank or thrift institution, savings and loan association, or building and loan association organized under the laws of the United States or any state, any insured institution as defined in Section 401 of the National Housing Act (12 U.S.C. Sec. 1724(a)), any credit union organized under the laws of the United States or any state, any national banking association or corporation acting under Chapter 6 (commencing with Section 601) of Title 12 of the United States Code, any agency, agent or branch of a foreign bank, any currency dealer or exchange, any person or business engaged primarily in the cashing of checks, any person or business who regularly engages in the issuing, selling, or redeeming of travelers' checks, money orders, or similar instruments, any broker or dealer in securities registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 or with the Commissioner of Corporations under Part 3 (commencing with Section 25200) of Division 1 of Title 4 of the Corporations Code, any licensed transmitter of funds or other person or business regularly engaged in transmitting funds to a foreign nation for others, any investment banker or investment company, any insurer, any dealer in gold, silver, or platinum bullion or coins, diamonds, emeralds, rubies, or sapphires, any pawnbroker, any telegraph company, any personal property broker, any person or business acting as a real property securities dealer within the meaning of Section 10237 of the Business and Professions Code, whether licensed to do so or not, any person or business acting within the meaning and scope of subdivisions (d) and (e) of Section 10131 and Section 10131.1 of the Business and Professions Code, whether licensed to do so or not, and any person or business defined as a "bank," "financial agency," or "financial institution" by Section 5312 of Title 31 of the United States Code and Section 103.11 of Title 31 of the Code of Federal Regulations and any successor provisions thereto.

(c) "Transaction" includes the deposit, withdrawal, transfer, bailment, loan, pledge, payment, or exchange of currency, or a monetary instrument, as defined by subdivision (d), by, through, or to, a financial institution as defined by subdivision (b).

(d) "Monetary instrument" means United States currency and coin; the currency and coin of any foreign country; any bank check, cashier's check, traveler's check, money order, stock, investment security, or negotiable instrument in bearer form or otherwise in such form that title thereto passes upon delivery; gold, silver, or platinum bullion or coins; and diamonds, emeralds, rubies, or sapphires. "Monetary instrument" does not include bank checks, cashier's checks, traveler's checks, or money orders made payable to the order of a named party which have not been endorsed or which bear restrictive endorsements.

(e) "Criminal activity" means a criminal offense punishable under the laws of this state by death or imprisonment in the state prison or from a criminal offense committed in another jurisdiction punishable under the laws of that jurisdiction by death or imprisonment for a term exceeding one year.

SEC. 8. Section 198 of the Penal Code is amended to read:

198. A bare fear of the commission of any of the offenses mentioned in subdivisions 2 and 3 of Section 197, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone.

SEC. 9. Section 241 of the Penal Code, as amended by Chapter 56 of the Statutes of 1987, is amended to read:

241. (a) An assault is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

(b) When an assault is committed against the person of a peace officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, traffic officer, or animal control officer 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 the victim is a peace officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the assault is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment.

(c) 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" refers to those persons who meet the standards set forth in Section 1797.84 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) "Lifeguard" means a person who is:

(A) Employed as a lifeguard by the state, a county, or a city, and is designated by local ordinance as a public officer who has a duty and responsibility to enforce local ordinances and misdemeanors through the issuance of citations.

(B) Wearing distinctive clothing which includes written identification of the person's status as a lifeguard and which clearly identifies the employing organization.

(6) "Traffic officer" means any person employed by a county or city to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(7) "Animal control officer" means any person employed by a county or city for purposes of enforcing animal control laws or regulations.

SEC. 10. Section 241.2 of the Penal Code is amended to read:

241.2. (a) When an assault is committed on school property against any person, the assault is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(b) "School," as used in this section, means 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, technical school, or community college.

SEC. 11. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine of not exceeding two thousand dollars ($2,000), 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, mobile intensive care paramedic, lifeguard, traffic officer, or animal control officer 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 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 the

victim is a peace officer, custodial officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, traffic officer, or animal control officer 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 two thousand dollars ($2,000), 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, mobile intensive care paramedic, lifeguard, traffic officer, or animal control officer 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 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 the victim is a peace officer, custodial officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, traffic officer, or animal control officer 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 two thousand dollars ($2,000), 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 1797.84 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.

(8) "Lifeguard" means a person defined in paragraph (5) of subdivision (c) of Section 241.

(9) "Traffic officer" means any person employed by a city, county, or city and county, to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(10) "Animal control officer" means any person employed by a city, county, or city and county for purposes of enforcing animal control laws or regulations.

It is the intent of the Legislature by amendments to this section at the 1981–82 and 1983–84 Regular Sessions 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, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

SEC. 12. Section 243.2 of the Penal Code is amended to read:

243.2. (a) When a battery is committed on school property against any person, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(b) "School," as used in this section, means 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, technical school, or community college.

SEC. 12.5. Section 243.4 of the Penal Code is amended to read:

. 243.4. (a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.

(b) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more

than one year or in the state prison for two, three, or four years.

(c) Any person who, for the purpose of sexual arousal, gratification, or abuse, causes another, against that person's will while that person is either unlawfully restrained by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery. Such an act is punishable by imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.

(d) As used in this section, "intimate part" means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female. Sexual battery does not include the crimes defined in Section 261 or 289. As used in this section, "touches" means physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense.

As used in this section, "seriously disabled" means a person with severe physical or sensory disabilities.

As used in this section, "medically incapacitated" means a person who is incapacitated as a result of prescribed sedatives, anesthesia, or other medication.

As used in this section, "institutionalized" means a person who is located voluntarily or involuntarily in a hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.

(e) This section shall not be construed to limit or prevent prosecution under any other law which also proscribes a course of conduct that also is proscribed by this section.

SEC. 13. 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 the peace officer's 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 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, technical school, or community college.

SEC. 13.5. Section 273b of the Penal Code is amended to read:

273b. No child under the age of 16 years shall be placed in any courtroom, or in any vehicle for transportation to any place, in company with adults charged with or convicted of crime, except in the presence of a proper official.

SEC. 14. Section 273c of the Penal Code is amended to read:

273c. All fines, penalties, and forfeitures imposed and collected under the provisions of Sections 270, 271, 271a, 273a, and 273b, or under the provisions of any law relating to, or affecting, children, in every case where the prosecution is instituted or conducted by a society incorporated under the laws of this state for the prevention of cruelty to children, inure to such society in aid of the purposes for which it is incorporated.

SEC. 15. Section 273.81 of the Penal Code is amended to read:

273.81. (a) There is hereby established in the Office of Criminal Justice Planning a program of financial and technical assistance for district attorneys' offices, designated the Spousal Abuser Prosecution Program. 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 that office, and shall to the greatest extent feasible, be coordinated or consolidated with any federal or local funds that may be made available for these purposes.

The Office of Criminal Justice Planning shall establish guidelines for the provision of grant awards to proposed and existing programs prior to the allocation of funds under this chapter. These guidelines shall contain the criteria for the selection of agencies to receive funding and the terms and conditions upon which the Office of Criminal Justice Planning is prepared to offer grants pursuant to statutory authority. The guidelines shall not constitute rules, regulations, orders, or standards of general application.

(b) The executive director is authorized to allocate and award funds to counties in which spousal abuser prosecution units are established or are proposed to be established in substantial compliance with the policies and criteria set forth in this chapter.

(c) The allocation and award of funds shall be made upon application executed by the county's district attorney or by the city's attorney and approved by the county board of supervisors or by the city council. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the California Spousal Abuser Prosecution Program, be made available to support the prosecution of spousal abuser felony cases. Local grant awards made under this program shall not be subject to review as specified in Section 10295 of the Public Contract Code.

(d) Local government recipients shall provide 20 percent matching funds for every grant awarded under this program.

SEC. 16. Section 273.82 of the Penal Code is amended to read:

273.82. Spousal abuser prosecution units receiving funds under this chapter shall concentrate enhanced prosecution efforts and resources upon individuals identified under selection criteria set forth in Section 273.83. Enhanced prosecution efforts and resources shall include, but not be limited to, all of the following:

(a) (1) Vertical prosecutorial representation, whereby the prosecutor who, or prosecution unit which, makes the initial filing or appearance in a case performs all subsequent court appearances on that particular case through its conclusion, including the sentencing

phase.

(2) Vertical counselor representation, whereby a trained domestic violence counselor maintains liaison from initial court appearances through the case's conclusion, including the sentencing phase.

(b) The assignment of highly qualified investigators and prosecutors to spousal abuser cases. "Highly qualified" for the purposes of this chapter means: (1) individuals with one year of experience in the investigation and prosecution of felonies, (2) individuals whom the district attorney has selected to receive training as set forth in Section 13836, or (3) individuals who have attended a program providing equivalent training as approved by the Office of Criminal Justice Planning.

(c) A significant reduction of caseloads for investigators and prosecutors assigned to spousal abuser cases.

(d) Coordination with local rape victim counseling centers, spousal abuse services programs, and victim-witness assistance programs. That coordination shall include, but not be limited to: referrals of individuals to receive client services; participation in local training programs; membership and participation in local task forces established to improve communication between criminal justice system agencies and community service agencies; and cooperating with individuals serving as liaison representatives of local rape victim counseling centers, spousal abuse victim programs, and victim-witness assistance programs.

SEC. 17. Section 281 of the Penal Code is amended to read:

281. Every person having a husband or wife living, who marries any other person, except in the cases specified in Section 282, is guilty of bigamy.

SEC. 18. Section 282 of the Penal Code is amended to read:

282. Section 281 does not extend to any of the following:

(a) To any person by reason of any former marriage whose husband or wife by such marriage has been absent for five successive years without being known to such person within that time to be living.

(b) To any person by reason of any former marriage which has been pronounced void, annulled, or dissolved by the judgment of a competent court.

SEC. 18.5. Section 330.8 of the Penal Code is amended to read:

330.8. Notwithstanding Sections 330a, 330b, and 330.1 to 330.5, inclusive, the sale, transportation, storage, and manufacture of gambling devices, as defined in Section 330.1, including the acquisition of essential parts therefor and the assembly of such parts, is permitted, provided those devices are sold, transported, stored, and manufactured only for subsequent transportation in interstate or foreign commerce when that transportation is not prohibited by any applicable federal law. Those activities may be conducted only by persons who have registered with the United States government pursuant to Chapter 24 (commencing with Section 1171) of Title 15

of the United States Code, as amended. Those gambling devices shall not be displayed to the general public or sold for use in California regardless of where purchased, nor held nor manufactured in violation of any applicable federal law. A violation of this section is a misdemeanor.

SEC. 19. Section 331 of the Penal Code is amended to read:

331. Every person who knowingly permits any of the games mentioned in Sections 330 and 330a to be played, conducted, or dealt in any house owned or rented by such person, in whole or in part, is punishable as provided in Sections 330 and 330a.

SEC. 20. Section 337b of the Penal Code is amended to read:

337b. Any person who gives, or offers or promises to give, or attempts to give or offer, any money, bribe, or thing of value, to any participant or player, or to any prospective participant or player, in any sporting event, contest, or exhibition of any kind whatsoever, except a wrestling exhibition as defined in Section 18626 of the Business and Professions Code, and specifically including, but without being limited to, such sporting events, contests, and exhibitions as baseball, football, basketball, boxing, horseracing, and wrestling matches, with the intention or understanding or agreement that such participant or player or such prospective participant or player shall not use his or her best efforts to win such sporting event, contest, or exhibition, or shall so conduct himself or herself in such sporting event, contest, or exhibition that any other player, participant or team of players or participants shall thereby be assisted or enabled to win such sporting event, contest, or exhibition, or shall so conduct himself or herself in such sporting event, contest, or exhibition as to limit his or her or his or her team's margin of victory in such sporting event, contest, or exhibition, is guilty of a felony, and shall be punished by imprisonment in the state prison, or by a fine not exceeding five thousand dollars ($5,000), or by both such fine and imprisonment.

SEC. 21. Section 337c of the Penal Code is amended to read:

337c. Any person who accepts, or attempts to accept, or offers to accept, or agrees to accept, any money, bribe or thing of value, with the intention or understanding or agreement that he or she will not use his or her best efforts to win any sporting event, contest, or exhibition of any kind whatsoever, except a wrestling exhibition as defined in Section 18626 of the Business and Professions Code, and specifically including, but without being limited to, such sporting events, contests, or exhibitions as baseball, football, basketball, boxing, horseracing, and wrestling matches, in which he or she is playing or participating or is about to play or participate in, or will so conduct himself or herself in such sporting event, contest, or exhibition that any other player or participant or team of players or participants shall thereby be assisted or enabled to win such sporting event, contest, or exhibition, or will so conduct himself or herself in such sporting event, contest, or exhibition as to limit his or her or his or her team's margin of victory in such sporting event, contest, or

exhibition, is guilty of a felony, and shall be punished by imprisonment in the state prison, or by a fine not exceeding five thousand dollars ($5,000), or by both such fine and imprisonment.

SEC. 22. Section 337.1 of the Penal Code is amended to read:

337.1. Any person, who knowingly and designedly by false representation attempts to, or does persuade, procure or cause another person to wager on a horse in a race to be run in this state or elsewhere, and upon which money is wagered in this state, and who asks or demands compensation as a reward for information or purported information given in such case is a tout, and is guilty of touting.

SEC. 23. Section 344 of the Penal Code is repealed.

SEC. 23.3. Section 350 of the Penal Code is amended to read:

350. (a) Any person who, without the consent of the registrant, willfully manufactures, or intentionally sells any counterfeit of a mark registered with the Secretary of State and registrable under Section 1052 of Title 15 of the United States Code or incontestable under Section 1065 of Title 15 of the United States Code, shall upon conviction, if such person is an individual, be fined not more than five thousand dollars ($5,000) or imprisoned in the county jail for not more than one year, or both, or if such person is a corporation, be fined not more than one hundred thousand dollars ($100,000).

(b) Any person who has been convicted of a violation of subdivision (a) shall upon subsequent conviction, if such person is an individual, be fined not more than fifty thousand dollars ($50,000) or imprisoned in the county jail for not more than one year or the state prison, or both, or if such person is a corporation, be fined not more than two hundred thousand dollars ($200,000).

(c) Any person who has been convicted of a violation of subdivision (a) and who, by virtue of the conduct which was the basis of the conviction, has directly and foreseeably caused death or great bodily injury to another through reliance on the counterfeited item for its intended purpose shall, if the person is an individual, be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison for two, three, or four years, or both, or, if that person is a corporation, be fined not more than two hundred thousand dollars ($200,000).

(d) If, in any action brought under this section, the court determines that a mark is counterfeit, the court may order the destruction of all such marks, all means of making the marks, and all goods, articles, or other matter bearing the marks, which are in the possession or control of the court or of the defendant; or, after obliteration of the counterfeit mark, the court may dispose of those materials by ordering their transfer to the State of California, an eleemosynary institution, or the owner of the registered service marks or trademarks.

(e) For purposes of this section, the term "counterfeit mark" means a spurious mark which is identical with, or substantially indistinguishable from, a registered mark and which is used on or in

connection with the same type of goods or services for which the genuine mark is registered.

(f) This section shall not be enforced against any party who has adopted and lawfully used the same or confusingly similar mark in the rendition of like services or the manufacture or sale of like goods in this state from a date prior to the effective date of registration of the service mark or trademark pursuant to Chapter 2 (commencing with Section 14200) of Division 6 of the Business and Professions Code.

SEC. 23.5. Section 361 of the Penal Code is repealed.

SEC. 24. Section 382.5 of the Penal Code is amended to read:

382.5. Every person who sells, dispenses, administers or prescribes dinitrophenol for any purpose shall be guilty of a felony, punishable by a fine not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or by imprisonment in the state prison, or by both such fine and imprisonment.

This section shall not apply to dinitrophenol manufactured or sold as an economic poison registered under the provision of Section 12811 of the Food and Agricultural Code nor to sales for use in manufacturing or for scientific purposes, and not for human consumption.

SEC. 24.5. Section 384g of the Penal Code is repealed.

SEC. 25. 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 80001) of the Food and Agricultural Code.

SEC. 25.5. Section 396.5 of the Penal Code is amended to read:

396.5. It shall be unlawful for any retail food store or wholesale food concern, as defined in Section 3(k) of the federal Food Stamp Act of 1977 (Public Law 95-113) (7 U.S.C. Sec. 2012(k)), or any person, to sell, furnish or give away any goods or services, other than those items authorized by the Food Stamp Act of 1964, as amended (Public Law 88-525) (Chapter 51 (commencing with Section 2011) of Title 7 of the United States Code), in exchange for food stamps issued pursuant to Chapter 10 (commencing with Section 18900), Part 6, Division 9 of the Welfare and Institutions Code.

Any violator of this section is guilty of a misdemeanor and shall be punished by a fine of not more than five thousand dollars ($5,000) or by imprisonment in the county jail not exceeding 90 days, or by both that fine and imprisonment.

SEC. 26. Section 398 of the Penal Code is repealed.

SEC. 27. Section 414 of the Penal Code is amended to read:

414. Every person who leaves this state with intent to evade any of the provisions of Section 412 or 413, and to commit any act out of this state such as is prohibited by them, and who does any act which would be punishable under these provisions if committed within this state, is punishable in the same manner as he or she would have been in case such act had been committed within this state.

SEC. 28. Title 11.5 (commencing with Section 422) of Part 1 of the Penal Code is repealed.

SEC. 29. Section 426 of the Penal Code is amended to read:

426. The phrase "public moneys," as used in Sections 424 and 425, includes all bonds and evidence of indebtedness, and all moneys belonging to the state, or any city, county, town, district, or public agency therein, and all moneys, bonds, and evidences of indebtedness received or held by state, county, district, city, town, or public agency officers in their official capacity.

SEC. 29.5. Section 500 of the Penal Code is repealed.

SEC. 30. Section 506a of the Penal Code is amended to read:

506a. Any person who, acting as collector, or acting in any capacity in or about a business conducted for the collection of accounts or debts owing by another person, and who violates Section 506 of the Penal Code, shall be deemed to be an agent or person as defined in Section 506, and subject for a violation of Section 506, to be prosecuted, tried, and punished in accordance therewith and with law; and "collector" means every such person who collects, or who has in his or her possession or under his or her control property or money for the use of any other person, whether in his or her own name and mixed with his or her own property or money, or otherwise, or whether he or she has any interest, direct or indirect, in or to such property or money, or any portion thereof, and who fraudulently appropriates to his or her own use, or the use of any person other than the true owner, or person entitled thereto, or secretes that property or money, or any portion thereof, or interest therein not his or her own, with a fraudulent intent to appropriate it to any use or purpose not in the due and lawful execution of his or her trust.

SEC. 31. Section 526 of the Penal Code is amended to read:

526. Any person, who, with intent to obtain from another person any money, article of personal property or other thing of value, delivers or causes to be delivered to the other person any paper, document or written, typed or printed form purporting to be an order or other process of a court, or designed or calculated by its writing, typing or printing, or the arrangement thereof, to cause or lead the other person to believe it to be an order or other process of a court, when in fact such paper, document or written, typed or printed form is not an order or process of a court, is guilty of a misdemeanor, and each separate delivery of any paper, document or written, typed or printed form shall constitute a separate offense.

SEC. 32. Section 538 of the Penal Code is amended to read:

538. Every person, who, after mortgaging any of the property, permitted to be mortgaged by the provisions of Sections 9102, 9105, and 9109 of the Commercial Code, excepting locomotives, engines, rolling stock of a railroad, steamboat machinery in actual use, and vessels, during the existence of the mortgage, with intent to defraud the mortgagee, his or her representative or assigns, takes, drives, carries away, or otherwise removes or permits the taking, driving, or carrying away, or other removal of the mortgaged property, or any part thereof, from the county where it was situated when mortgaged, without the written consent of the mortgagee, or who sells, transfers, slaughters, destroys, or in any manner further encumbers the mortgaged property, or any part thereof, or causes it to be sold, transferred, slaughtered, destroyed, or further encumbered, is guilty of theft, and is punishable accordingly. In the case of a sale, transfer, or further encumbrance at or before the time of making the sale, transfer, or encumbrance, the mortgagor informs the person to whom the sale, transfer, or encumbrance is made, of the existence of the prior mortgage, and also informs the prior mortgagee of the intended sale, transfer, or encumbrance, in writing, by giving the name and place of residence of the party to whom the sale, transfer, or encumbrance is to be made.

SEC. 33. Section 579 of the Penal Code is amended to read:

579. No person shall be convicted of an offense under Section 577 or 578 by reason that the contents of any barrel, box, case, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher did not correspond with the description given in the instrument of the merchandise received, if the description corresponded substantially with the marks, labels, or brands upon the outside of the vessel or package, unless it appears that the accused knew that the marks, labels, or brands were untrue.

SEC. 34. Section 583 of the Penal Code is amended to read:

583. Section 581 does not apply where property is demanded or sold by virtue of process of law.

SEC. 35. Section 590a of the Penal Code is amended to read:

590a. One-half of all fines imposed and collected under Section 590 shall be paid to the informer who first causes a complaint to be filed charging the defendant with the violation of Section 590.

SEC. 36. Section 597d of the Penal Code is amended to read:

597d. Any sheriff, constable, police, or peace officer, or officer qualified as provided in Section 607f of the Civil Code, may enter any place, building, or tenement, where there is an exhibition of the fighting of birds or animals, or where preparations are being made for such an exhibition, and, without a warrant, arrest all persons present.

SEC. 37. Section 597n of the Penal Code is amended to read:

597n. Any person who cuts the solid part of the tail of any horse in the operation known as "docking," or in any other operation performed for the purpose of shortening the tail of any horse, within the State of California, or procures the same to be done, or imports

or brings into this state any docked horse, or horses, or drives, works, uses, races, or deals in any unregistered docked horse, or horses, within the State of California except as provided in Section 597r, is guilty of a misdemeanor.

SEC. 38. Section 599d of the Penal Code is repealed.

SEC. 38.5. Section 606 of the Penal Code is repealed.

SEC. 39. Section 633 of the Penal Code is amended to read:

633. Nothing in Section 631, 632, or 632.5 prohibits the Attorney General, any district attorney, or any assistant, deputy, or investigator of the Attorney General or any district attorney, any officer of the California Highway Patrol, any chief of police, assistant chief of police, or policeman of a city or city and county, any sheriff, undersheriff, or deputy sheriff regularly employed and paid as such of a county, or any person acting pursuant to the direction of one of these law enforcement officers acting within the scope of his or her authority, from overhearing or recording any communication which they could lawfully overhear or record prior to the effective date of this chapter.

Nothing in Section 631, 632, or 632.5 renders inadmissible any evidence obtained by the above-named persons by means of overhearing or recording any communication which they could lawfully overhear or record prior to the effective date of this chapter.

SEC. 40. Section 641 of the Penal Code is amended to read:

641. Every person who, by the payment or promise of any bribe, inducement, or reward, procures or attempts to procure any telegraph or telephone agent, operator, or employee to disclose any private message, or the contents, purport, substance, or meaning thereof, or offers to any agent, operator, or employee any bribe, compensation, or reward for the disclosure of any private information received by him or her by reason of his or her trust as agent, operator, or employee, or uses or attempts to use any information so obtained, is punishable as provided in Section 639.

SEC. 41. Section 647 of the Penal Code is amended to read:

647. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, beside the agreement, be done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons

for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself or herself and to account for his or her presence when requested by any peace officer so to do, if the surrounding circumstances are such as to indicate to a reasonable person that the public safety demands such identification.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

(ff) When a person has violated subdivision (f) of this section, a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. Such person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. No person who has been placed in civil protective custody shall thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to such placement. This subdivision shall not apply to the following persons:

(1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

(2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f) of this section.

(3) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

(g) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant thereof. As used in this subdivision, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(h) Who, while loitering, prowling, or wandering upon the

private property of another, at any time, peeks in the door or window of any inhabited building or structure located thereon, without visible or lawful business with the owner or occupant thereof.

(i) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control thereof.

In any accusatory pleading charging a violation of subdivision (b) of this section, if the defendant has been once previously convicted of a violation of that subdivision, 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 defendant shall be imprisoned in the county jail for a period of not less than 45 days and shall not be eligible for release upon completion of sentence, on parole, or on any other basis until he or she has served a period of not less than 45 days in the county jail. In no such case shall the trial court grant probation or suspend the execution of sentence imposed upon the defendant.

In any accusatory pleading charging a violation of subdivision (b) of this section, if the defendant has been previously convicted two or more times of a violation of that subdivision, each such previous conviction shall be charged in the accusatory pleading; and, if two or more of such previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall be imprisoned in the county jail for a period of not less than 90 days and shall not be eligible for release upon completion of sentence, on parole, or on any other basis until he or she has served a period of not less than 90 days in the county jail. In no such case shall the trial court grant probation or suspend the execution of sentence imposed upon the defendant.

SEC. 42. Section 647b of the Penal Code is amended to read:

647b. Every person who loiters about any school in which adults are in attendance at courses established pursuant to Chapter 10 (commencing with Section 52500) of Part 28 of the Education Code, and who annoys or molests any person in attendance therein shall be punished by a fine of not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

SEC. 43. Section 650½ of the Penal Code is amended and renumbered to read:

650.5. A person who willfully and wrongfully commits any act which seriously injures the person or property of another, or which seriously disturbs or endangers the public peace or health, or which openly outrages public decency, or who willfully and wrongfully in any manner, verbal or written, uses another's name for accomplishing lewd or licentious purposes, whether those purposes are accomplished or not, or who willfully and wrongfully uses another's name in any manner that will affect, or have a tendency to affect the moral reputation of the person whose name is used,

generally, or in the estimation of the person or persons to whom it is so used, or who with intent of accomplishing any lewd or licentious purpose, whether that purpose is accomplished or not, personifies any person other than himself or herself, or who causes or procures any other person or persons to identify him or her, or to give assurance that he or she is any other person than himself or herself to aid or assist him or her to accomplish any lewd or licentious purpose, for which no other punishment is expressly prescribed by this code, is guilty of a misdemeanor.

SEC. 44. Section 653½ of the Penal Code is amended and renumbered to read:

653.5. Any appraiser, appointed by virtue of Sections 605, 606, 607, and 609 of the Probate Code, who shall accept any fees, reward, or compensation other than that provided for by law, from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person, is guilty of a misdemeanor.

SEC. 45. Section 665 of the Penal Code is amended to read:

665. Sections 663 and 664 do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

SEC. 46. Section 690 of the Penal Code is amended to read:

690. The provisions of Part 2 (commencing with Section 681) shall apply to all criminal actions and proceedings in all courts, except where jurisdictional limitations or the nature of specific provisions prevent, or special provision is made for particular courts or proceedings.

SEC. 47. Section 691 of the Penal Code is amended to read:

691. The following words have in Part 2 (commencing with Section 681) the signification attached to them in this section, unless it is otherwise apparent from the context:

(a) The words "inferior court" or "inferior courts" include municipal courts and justices' courts.

(b) The words "competent court" when used with reference to the jurisdiction over any public offense, mean any court the subject matter jurisdiction of which includes the offense so mentioned.

(c) The words "jurisdictional territory" when used with reference to a court, mean the city and county, county, city, township, or other limited territory over which the criminal jurisdiction of the court extends, as provided by law, and in case of a superior court mean the county in which the court sits.

(d) The words "accusatory pleading" include an indictment, an information, an accusation, a complaint filed with a magistrate charging a public offense of which the superior court has original trial jurisdiction, and a complaint filed with an inferior court charging a public offense of which the inferior court has original trial jurisdiction.

(e) The words "prosecuting attorney" include any attorney,

whether designated as district attorney, city attorney, city prosecutor, prosecuting attorney, or by any other title, having by law the right or duty to prosecute, in behalf of the people, any charge of a public offense.

(f) The word "county" includes county, city and county, and city.

SEC. 48. Section 704 of the Penal Code is amended to read:

704. When the person informed against is brought before the magistrate, if the charge be controverted, the magistrate shall take testimony in relation thereto. The evidence shall be reduced to writing and subscribed by the witnesses. The magistrate may, in his or her discretion, order the testimony and proceedings to be taken down in shorthand, and for that purpose he or she may appoint a shorthand reporter. The deposition or testimony of the witnesses shall be authenticated in the form prescribed in Section 869.

SEC. 49. Section 737 of the Penal Code is amended to read:

737. All public offenses triable in the superior court shall be prosecuted therein by indictment or information, except as provided in the Government Code, the Juvenile Court Law under Chapter 2 (commencing with Section 200) of Division 2 of the Welfare and Institutions Code, and Section 859a.

SEC. 50. Section 830.7 of the Penal Code is amended to read:

830.7. The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832:

(a) Persons designated by a cemetery authority pursuant to Section 8325 of the Health and Safety Code.

(b) Persons regularly employed as security officers for institutions of higher education, recognized under subdivision (a) of Section 94310.1 of the Education Code, if the institution has concluded a memorandum of understanding, permitting the exercise of that authority, with the sheriff or chief of police within whose jurisdiction the institution lies.

(c) Persons regularly employed as security officers for health facilities defined in Section 1250 of the Health and Safety Code which are owned and operated by cities, counties, and cities and counties, if the facility has concluded a memorandum of understanding permitting the exercise of that authority with the sheriff or chief of police within whose jurisdictions the facility lies.

(d) Employees of the California Department of Forestry and Fire Protection designated by the Director of Forestry and approved by the Secretary of the Resources Agency.

(e) Employees of the Public Utilities Commission assigned to the Transportation Division, designated by the division director and approved by the commission, to the extent necessary to enforce the provisions of the Public Utilities Code.

SEC. 51. Section 869 of the Penal Code is amended to read:

869. The testimony of each witness in cases of homicide shall be

reduced to writing, as a deposition, by the magistrate, or under his or her direction, and in other cases upon the demand of the prosecuting attorney, or the defendant, or his or her counsel. The magistrate before whom the examination is had may, in his or her discretion, order the testimony and proceedings to be taken down in shorthand in all examinations herein mentioned, and for that purpose he or she may appoint a shorthand reporter. The deposition or testimony of the witness shall be authenticated in the following form:

(a) It shall state the name of the witness, his or her place of residence, and his or her business or profession; except that if the witness is a peace officer, it shall state his or her name, and the address given in his or her testimony at the hearing.

(b) It shall contain the questions put to the witness and his or her answers thereto, each answer being distinctly read to him or her as it is taken down, and being corrected or added to until it conforms to what he or she declares is the truth, except in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him or her.

(c) If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, shall be stated.

(d) The deposition shall be signed by the witness, or if he or she refuses to sign it, his or her reason for refusing shall be stated in writing, as he or she gives it, except in cases where the deposition is taken down in shorthand, it need not be signed by the witness.

(e) The reporter shall, within 10 days after the close of the examination, if the defendant be held to answer the charge in superior court, or in any other case if either the defendant or the prosecution orders the transcript, transcribe his or her shorthand notes, making an original and one copy and as many additional copies thereof as there are defendants (other than fictitious defendants), regardless of the number of charges or fictitious defendants included in the same examination, and certify and deliver the original and all copies to the county clerk of the county in which the defendant was examined. The reporter shall, before receiving any compensation as a reporter, file with the auditor of the county his or her affidavit setting forth that the transcript has been delivered to the county clerk within the time herein provided for. The compensation of the reporter for any services rendered by him or her as the reporter in any court of this state shall be reduced one-half if the provisions of this section as to the time of filing said transcript have not been complied with by him or her.

(f) In every case in which a transcript is delivered as provided in this section, the county clerk shall file the original of the transcript with the papers in the case, and shall deliver a copy of the transcript to the district attorney immediately upon his or her receipt thereof and shall deliver a copy of said transcript to each defendant (other

than a fictitious defendant) at least five days before trial or upon earlier demand by him or her without cost to him or her; provided, that if any defendant be held to answer to two or more charges upon the same examination and thereafter the district attorney shall file separate informations upon said several charges, the delivery to each such defendant of one copy of the transcript of the examination shall be a compliance with this section as to all of those informations.

(g) If the transcript is delivered by the reporter within the time hereinbefore provided for, the reporter shall be entitled to receive the compensation fixed and allowed by law to reporters in the superior courts of this state.

SEC. 52. Section 870 of the Penal Code is amended to read:

870. The magistrate or his or her clerk shall keep the depositions taken on the information or the examination, until they are returned to the proper court; and shall not permit them to be examined or copied by any person except a judge of a court having jurisdiction of the offense, or authorized to issue writs of habeas corpus, the Attorney General, district attorney, or other prosecuting attorney, and the defendant and his or her counsel; provided however, upon demand by the defendant or his or her attorney the magistrate shall order a transcript of the depositions taken on the information, or on the examination, to be immediately furnished the defendant or his or her attorney, after the commitment of the defendant as provided by Sections 876 and 877, and the reporter furnishing the depositions, shall receive compensation and be paid by the county for the same as provided by subdivision (f) of Section 869.

SEC. 53. Section 881 of the Penal Code is amended to read:

881. (a) If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the magistrate shall commit him or her to prison until he or she complies or is legally discharged.

(b) If a witness fails to appear at the preliminary hearing in response to a subpoena, the court may hear evidence, including testimony or an affidavit from the arresting or interviewing officer, and if the court determines on the basis of the evidence that the witness is a material witness, the court shall issue a bench warrant for the arrest of the witness, and upon the appearance of the witness, may commit him or her into custody until the conclusion of the preliminary hearing, or until the defendant enters a plea of nolo contendere, or the witness is otherwise legally discharged.

The court may order the witness to enter into a written undertaking to the effect that he or she will appear and testify at the time and place ordered by the court or that he or she will forfeit an amount that the court deems proper.

(c) Once the material witness has been taken into custody on the bench warrant he or she shall be brought before the magistrate issuing the warrant, if available, within two court days for a hearing to determine if the witness should be released on security of

appearance or maintained in custody.

(d) A material witness shall remain in custody under this section for no longer than 10 days.

(e) If a material witness is being held in custody under this section the prosecution is entitled to have the preliminary hearing proceed, as to this witness only, within 10 days of the arraignment of the defendant. Once this material witness has completed his or her testimony the defendant shall be entitled to a reasonable continuance.

SEC. 54. Section 882 of the Penal Code is amended to read:

882. When, however, it satisfactorily appears by examination, on oath of the witness, or any other person, that the witness is unable to procure sureties, he or she may be forthwith conditionally examined on behalf of the people. The examination shall be by question and answer, in the presence of the defendant, or after notice to him or her, if on bail, and conducted in the same manner as the examination before a committing magistrate is required by this code to be conducted, and the witness thereupon discharged; and the deposition may be used upon the trial of the defendant, except in cases of homicide, under the same conditions as mentioned in Section 1345; but this section does not apply to an accomplice in the commission of the offense charged.

SEC. 55. Section 903 of the Penal Code is amended to read:

903. This article applies in each county in which a jury commissioner is appointed pursuant to Section 204.1 of the Code of Civil Procedure and in each county in which the secretary of the judges of the superior court performs the duties of jury commissioner pursuant to Section 69893 of the Government Code.

SEC. 56. Section 938.3 of the Penal Code is amended to read:

938.3. The services of the stenographic reporter shall constitute a charge against the county, and the stenographic reporter shall be compensated for reporting and transcribing at the same rates as prescribed in Sections 69947 to 69954, inclusive, of the Government Code, to be paid out of the county treasury on a warrant of the county auditor when ordered by the judge of the superior court.

SEC. 57. Section 949 of the Penal Code is amended to read:

949. The first pleading on the part of the people in the superior court is the indictment, information, accusation, or the complaint in any case certified to the superior court under Section 859a or the complaint filed in accordance with the provisions of Section 272. The first pleading on the part of the people in all inferior courts is the complaint except as otherwise provided by law.

SEC. 58. Section 998 of the Penal Code is amended to read:

998. If the court directs the case to be resubmitted, or an information to be filed, the defendant, if already in custody, shall remain, unless he or she is admitted to bail; or, if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment or information; and, unless a new indictment is

found or information filed before the next grand jury of the county is discharged, the court shall, on the discharge of such grand jury, make the order prescribed by Section 997.

SEC. 60. Section 1001 of the Penal Code is amended to read:

1001. It is the intent of the Legislature that neither this chapter, Chapter 2.5 (commencing with Section 1000) of this title, nor any other provision of law be construed to preempt other current or future pretrial or precomplaint diversion programs. It is also the intent of the Legislature that current or future posttrial diversion programs not be preempted, except as provided in Section 13201 or 13352.5 of the Vehicle Code. Sections 1001.2 to 1001.11, inclusive, of this chapter shall apply only to pretrial diversion programs as defined in Section 1001.1.

SEC. 61. Section 1026 of the Penal Code is amended to read:

1026. (a) When a defendant pleads not guilty by reason of insanity, and also joins with it another plea or pleas, the defendant shall first be tried as if only such other plea or pleas had been entered, and in that trial the defendant shall be conclusively presumed to have been sane at the time the offense is alleged to have been committed. If the jury shall find the defendant guilty, or if the defendant pleads only not guilty by reason of insanity, then the question whether the defendant was sane or insane at the time the offense was committed shall be promptly tried, either before the same jury or before a new jury in the discretion of the court. In that trial, the jury shall return a verdict either that the defendant was sane at the time the offense was committed or was insane at the time the offense was committed. If the verdict or finding is that the defendant was sane at the time the offense was committed, the court shall sentence the defendant as provided by law. If the verdict or finding be that the defendant was insane at the time the offense was committed, the court, unless it shall appear to the court that the sanity of the defendant has been recovered fully, shall direct that the defendant be confined in a state hospital for the care and treatment of the mentally disordered or any other appropriate public or private treatment facility approved by the community program director, or the court may order the defendant placed on outpatient status pursuant to Title 15 (commencing with Section 1600) of Part 2. The court shall transmit a copy of its order to the community program director or a designee, and if the defendant is ordered confined in a state hospital or other treatment facility, copies of the arrest reports and the report of the community program director required under subdivision (b) shall accompany the person to the state hospital or other treatment facility where the defendant is to be confined.

(b) Prior to making such order directing that the defendant be confined in a state hospital or other treatment facility or placed on outpatient status, the court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be placed on outpatient status or

confined in a state hospital or other treatment facility. No person shall be admitted to a state hospital or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee. If, however, it shall appear to the court that the sanity of the defendant has been recovered fully, the defendant shall be remanded to the custody of the sheriff until the issue of sanity shall have been finally determined in the manner prescribed by law. A defendant committed to a state hospital or other treatment facility or placed on outpatient status pursuant to Title 15 (commencing with Section 1600) of Part 2 shall not be released from confinement, parole, or outpatient status unless and until the court which committed the person shall, after notice and hearing, find and determine that the person's sanity has been restored. Nothing in this section shall prevent the transfer of such person from one state hospital to any other state hospital by proper authority. Nothing in this section shall prevent the transfer of the patient to a hospital in another state in the manner provided in Section 4119 of the Welfare and Institutions Code.

(c) If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, order the defendant transferred to a state hospital or to another public or private treatment facility approved by the community program director. Where either the defendant or the prosecuting attorney chooses to contest either kind of order of transfer, a petition may be filed in the court requesting a hearing which shall be held if the court determines that sufficient grounds exist. At that hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same procedures and standards of proof as used in conducting probation revocation hearings pursuant to Section 1203.2.

(d) Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(e) If the defendant is confined in a state hospital or other treatment facility as an inpatient, the medical director of the facility shall, at six-month intervals, submit a report in writing to the court and the community program director of the county of commitment or a designee setting forth the status and progress of the defendant. The court shall transmit copies of these reports to the prosecutor and

defense counsel.

(f) When directing that the defendant be confined in a state hospital pursuant to subdivision (a), the court shall select the state hospital in accordance with the policies established by the State Department of Mental Health.

(g) For purposes of this section and Sections 1026.1 to 1026.6, inclusive, "community program director" means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 5709.8 of the Welfare and Institutions Code.

SEC. 62. Section 1073 of the Penal Code is amended to read:

1073. Particular causes of challenge are of two kinds:

(a) For such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias.

(b) For the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which will prevent him or her from acting with entire impartiality and without prejudice to the substantial rights of either party, which is known in this code as actual bias.

SEC. 63. Section 1076 of the Penal Code is amended to read:

1076. In a challenge for implied bias, one or more of the causes stated in Section 1074 shall be alleged. In a challenge for actual bias, the cause stated in subdivision (b) of Section 1073 shall be alleged. No person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to the jury, founded upon public rumor, or statements in public journals, circulars, or other literature, or common notoriety if upon his or her declaration, under oath or otherwise, it appears to the court that he or she can and will, notwithstanding that opinion, act impartially and fairly upon the matters to be submitted to him or her. The challenge may be oral, but shall be entered in the minutes of the court or of the phonographic reporter.

SEC. 64. Section 1101 of the Penal Code is amended to read:

1101. The order mentioned in Sections 1099 and 1100 is an acquittal of the defendant discharged, and is a bar to another prosecution for the same offense.

SEC. 65. Section 1154 of the Penal Code is amended to read:

1154. The special verdict need not be in any particular form, but is sufficient if it presents intelligibly the facts found by the jury.

SEC. 66. 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 these convictions shall be the sum of the principal term, the subordinate term and any additional term imposed pursuant to

Section 667.5, 667.6, or 12022.1. 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, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, or 12022.9. 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, 12022.4, 12022.5, 12022.7, or 12022.9.

(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, 12022.4, 12022.5, 12022.7, or 12022.9. 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 the 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 the convictions which the 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, 12022.4, 12022.5, 12022.6, 12022.7, and 12022.9, unless the additional punishment therefor 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, 12022.4, 12022.5, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape, or burglary, or attempted penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or 12022.5 and (2) an enhancement for great bodily injury as provided in Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667.5, 667.6, 12022, 12022.1, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, and 12022.9 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, 12022.4, 12022.5, 12022.6, 12022.7, or 12022.9 or the defendant stands convicted of felony escape from an institution in which he or she 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, 12022.4, 12022.5, 12022.6, 12022.7, and 12022.9 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, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person 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. 67. Section 1170.7 of the Penal Code is amended to read:

1170.7. Robbery or attempted robbery for the purpose of

obtaining any controlled substance, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, when committed against a pharmacist, pharmacy employee, or other person lawfully possessing controlled substances, shall be considered a circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

SEC. 68. Section 1201 of the Penal Code is amended to read:

1201. He or she may show, for cause against the judgment:

(a) That he or she is insane; and if, in the opinion of the court, there is reasonable ground for believing him or her insane, the question of insanity shall be tried as provided in Chapter 6 (commencing with Section 1367) of Title 10 of Part 2. If, upon the trial of that question, the jury finds that he or she is sane, judgment shall be pronounced, but if they find him or her insane, he or she shall be committed to the state hospital for the care and treatment of the insane, until he or she becomes sane; and when notice is given of that fact, as provided in Section 1372, he or she shall be brought before the court for judgment.

(b) That he or she has good cause to offer, either in arrest of judgment or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial.

SEC. 69. Section 1202 of the Penal Code is amended to read:

1202. If no sufficient cause is alleged or appears to the court at the time fixed for pronouncing judgment, as provided in Section 1191, why judgment should not be pronounced, it shall thereupon be rendered; and if not rendered or pronounced within the time so fixed or to which it is continued under the provisions of Section 1191, then the defendant shall be entitled to a new trial. If the court shall refuse to hear a defendant's motion for a new trial or when made shall neglect to determine such motion before pronouncing judgment or the making of an order granting probation, then the defendant shall be entitled to a new trial.

SEC. 70. Section 1202a of the Penal Code is amended to read:

1202a. If the judgment is for imprisonment in the state prison the judgment shall direct that the defendant be delivered into the custody of the Director of Corrections at the state prison or institution designated by the Director of Corrections as the place for the reception of persons convicted of felonies, except where the judgment is for death in which case the defendant shall be taken to the warden of the California State Prison at San Quentin.

Unless a different place or places are so designated by the Director of Corrections, the judgment shall direct that the defendant be delivered into the custody of the Director of Corrections at the California State Prison at San Quentin. The Director of Corrections shall designate a place or places for the reception of persons convicted of felonies by order, which order or orders shall be served by registered mail, return receipt requested, upon each judge of each superior court in the state. The Director of Corrections may

change the place or places of commitment by the issuance of a new order. Nothing contained in this section affects any provision of Section 3400.

SEC. 71. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" means 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" means 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) Except as provided in subdivision (j), 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 recommendation of the amount the defendant should be required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. 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 attorneys 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 served 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 that 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 or her arrest, any person who has been convicted of arson, robbery, burglary, burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and was armed with that weapon at either of those 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, 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 those 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:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with the weapon at either of those times.

(B) The person used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the 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.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(f) When probation is granted in a case which comes within 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 shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where such determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all 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. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

(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 may obtain and include in the 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).

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court and as stated in the order, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

SEC. 72. Section 1203.055 of the Penal Code, as amended by Chapter 223 of the Statutes of 1987, is amended to read:

1203.055. (a) Notwithstanding any other provision of law, in sentencing a person convicted of committing or of attempting to commit one or more of the offenses listed in subdivision (b) against a person who is a passenger, operator, driver, or other occupant of any public transit vehicle whether the offense or attempt is committed within the vehicle or directed at the vehicle, the court shall require that the person serve some period of confinement. If probation is granted, it shall be a condition of probation that the person shall be confined in the county jail for some period of time. If the time spent in jail prior to arraignment is less than 24 hours, it shall not be considered to satisfy the requirement that some period of confinement be imposed.

(b) Subdivision (a) applies to the following crimes:

(1) Murder.

(2) A violation of Section 241, 241.3, 241.4, 244, 245, 245.2, or 246.

(3) Robbery, in violation of Section 211.

(4) Kidnapping, in violation of Section 207.

(5) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(6) Battery, in violation of Section 243, 243.3, or 243.1.

(7) Rape, in violation of Section 261, 262, 264, or 264.1.

(8) Assault with intent to commit rape or sodomy, in violation of Section 220.

(9) Any other offense in which the defendant inflicts great bodily injury on any person other than an accomplice.

(10) Grand theft, in violation of subdivision (1) of Section 487.

(11) Throwing of a hard substance or shooting a missile at the transit vehicle, in violation of Section 219.2.

(12) Unlawfully causing a fire, in violation of Section 452.

(13) Drawing, exhibiting, or using a firearm or deadly weapon, in violation of Section 417.

(14) A violation of Section 214.

(c) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for any person convicted of a felony offense falling within this section if the person has been previously convicted and sentenced pursuant to this section.

(d) (1) The existence of any fact which would make a person ineligible for probation under subdivisions (a) and (c) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

A finding bringing the defendant within the provisions of this section shall not be stricken pursuant to Section 1385 or any provision of law.

(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(3) As used in paragraph (9) of subdivision (b), "great bodily injury" means "great bodily injury" as defined in Section 12022.7.

(4) As used in subdivision (a), "public transit vehicle" means any motor vehicle, street car, trackless trolley, bus, shuttle, light rail system, rapid transit system, subway, train, taxi cab, or jitney, which transports members of the public for hire.

(e) The court shall require, as a condition of probation for any person convicted of committing a crime which took place on a public transit vehicle, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, that the person make restitution to the victim. 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 the condition would be inappropriate, that the defendant perform specified community service. Nothing in this subdivision shall be construed to limit the authority of a court to provide additional conditions of probation.

(f) In any case in which a person is convicted of committing a crime which took place on a public transit vehicle, the probation officer shall immediately investigate and report to the court at a specified time whether, as a result of the crime, property damage or loss or personal injury was caused by the defendant, the amount of such damage, loss, or injury, and the feasibility of requiring restitution to be made by the defendant. When a probation report

is required pursuant to Section 1203 the information required by this subdivision shall be added to that probation report.

SEC. 73. Section 1203.06 of the Penal Code is amended to read:

1203.06. Notwithstanding the provisions of Section 1203:

(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 personally used a firearm during the commission or attempted commission of any of the following crimes:

(i) Murder.

(ii) Robbery, in violation of Section 211.

(iii) Kidnapping, in violation of Section 207.

(iv) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(v) Burglary of the first degree, as defined in Section 460.

(vi) Except as provided in Section 1203.065, rape in violation of subdivision (2) of Section 261.

(vii) Assault with intent to commit rape or sodomy, in violation of Section 220.

(viii) Escape, in violation of Section 4530 or 4532.

(ix) A felony violation of Section 136.1 or 137.

(2) Any person previously convicted of a felony specified in subparagraphs (i) through (viii) of paragraph (1), or assault with intent to commit murder under former Section 217, who is convicted of a subsequent felony and who was personally armed with a firearm at any time during its commission or attempted commission or was unlawfully armed with a firearm at the time of his or her arrest for the subsequent felony.

(b) (1) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(3) As used in subdivision (a) "used a firearm" means to display a firearm in a menacing manner, to intentionally fire it, or to intentionally strike or hit a human being with it.

(4) As used in subdivision (a) "armed with a firearm" means to knowingly carry a firearm as a means of offense or defense.

SEC. 74. Section 1203.075 of the Penal Code is amended to read:

1203.075. Notwithstanding the provisions of Section 1203:

(a) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provisions of this section be stricken pursuant to Section 1385 for, any person who, with the intent to inflict such injury, personally inflicts great bodily injury on the

person of another in the commission or attempted commission of any of the following crimes:

(1) Murder.

(2) Robbery, in violation of Section 211.

(3) Kidnapping, in violation of Section 207.

(4) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(5) Burglary of the first degree, as defined in Section 460.

(6) Rape, in violation of subdivision (2) of Section 261.

(7) Assault with intent to commit rape or sodomy, in violation of Section 220.

(8) Escape, in violation of Section 4530 or 4532.

(9) A violation of subdivision (a) of Section 289.

(10) Sodomy, in violation of Section 286.

(11) Oral copulation, in violation of Section 288a.

(b) (1) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(3) As used in subdivision (a), "great bodily injury" means "great bodily injury" as defined in Section 12022.7.

SEC. 75. Section 1203.09 of the Penal Code is amended to read:

1203.09. (a) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who commits or attempts to commit one or more of the crimes listed in subdivision (b) against a person who is 60 years of age or older; or against a person who is blind, a paraplegic, or a quadriplegic, and such disability is known or reasonably should be known to the person committing the crime; and who during the course of the offense inflicts great bodily injury upon such person.

(b) Subdivision (a) applies to the following crimes:

(i) Murder.

(ii) Robbery, in violation of Section 211.

(iii) Kidnapping, in violation of Section 207.

(iv) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(v) Burglary of the first degree, as defined in Section 460.

(vi) Rape by force or violence, in violation of subdivision (2) of Section 261.

(vii) Assault with intent to commit rape or sodomy, in violation of Section 220.

(c) The existence of any fact which would make a person

ineligible for probation under either subdivision (a) or (f) 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.

(d) As used in this section "great bodily injury" means "great bodily injury" as defined in Section 12022.7.

(e) This section shall apply in all cases, including those cases where the infliction of great bodily injury is an element of the offense.

(f) 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, nor shall the execution or imposition of sentence be suspended for, any person convicted of having committed one or more of the following crimes against a person who is 60 years of age or older: assault with a deadly weapon or instrument, battery which results in physical injury which requires professional medical treatment, robbery, or mayhem.

SEC. 76. Section 1203.2a of the Penal Code is amended to read:

1203.2a. If any defendant who has been released on probation is committed to a prison in this state or another state for another offense, the court which released him or her on probation shall have jurisdiction to impose sentence, if no sentence has previously been imposed for the offense for which he or she was granted probation, in the absence of the defendant, on the request of the defendant made through his or her counsel, or by himself or herself in writing, if such writing is signed in the presence of the warden or superintendent of the prison in which he or she is confined or the duly authorized representative of the warden or superintendent, and such warden or superintendent or his or her representative attests both that the defendant has made and signed such request and that he or she states that he or she wishes the court to impose sentence in the case in which he or she was released on probation, in his or her absence and without him or her being represented by counsel.

The probation officer may, upon learning of such defendant's imprisonment, and must within 30 days after being notified in writing by the defendant or his or her counsel, or the warden or superintendent or duly authorized representative of the prison in which the defendant is confined, report such commitment to the court which released him or her on probation.

Upon being informed by the probation officer of the defendant's confinement, or upon receipt from the warden, superintendent, or duly authorized representative of any prison in this state of a certificate showing that the defendant is confined in prison, the court shall issue its commitment if sentence has previously been imposed. If sentence has not been previously imposed and if the defendant has requested the court through counsel or in writing in the manner

herein provided to impose sentence in the case in which he or she was released on probation in his or her absence and without the presence of counsel to represent him or her, the court shall impose sentence and issue its commitment, or shall make other final order terminating its jurisdiction over the defendant in the case in which the order of probation was made. If the case is one in which sentence has previously been imposed, the court shall be deprived of jurisdiction over defendant if it does not issue its commitment or make other final order terminating its jurisdiction over defendant in the case within 60 days after being notified of the confinement. If the case is one in which sentence has not previously been imposed, the court is deprived of jurisdiction over defendant if it does not impose sentence and issue its commitment or make other final order terminating its jurisdiction over defendant in the case within 30 days after defendant has, in the manner prescribed by this section, requested imposition of sentence.

Upon imposition of sentence hereunder the commitment shall be dated as of the date upon which probation was granted. If the defendant is then in a state prison for an offense committed subsequent to the one upon which he or she has been on probation, the term of imprisonment of such defendant under a commitment issued hereunder shall commence upon the date upon which defendant was delivered to prison under commitment for his or her subsequent offense. Any terms ordered to be served consecutively shall be served as otherwise provided by law.

In the event the probation officer fails to report such commitment to the court or the court fails to impose sentence as herein provided, the court shall be deprived thereafter of all jurisdiction it may have retained in the granting of probation in said case.

SEC. 77. Section 1203.5 of the Penal Code is amended to read:

1203.5. The offices of adult probation officer, assistant adult probation officer, and deputy adult probation officer are hereby created. The probation officers, assistant probation officers, and deputy probation officers appointed in accordance with Chapter 2 (commencing with Section 200) of Division 2 of Part 1 of the Welfare and Institutions Code shall be ex officio adult probation officers, assistant adult probation officers, and deputy adult probation officers except in any county or city and county whose charter provides for the separate office of adult probation officer. When the separate office of adult probation officer has been established he or she shall perform all the duties of probation officers except for matters under the jurisdiction of the juvenile court. Any adult probation officer may accept appointment as member of the Board of Corrections and serve in that capacity in addition to his or her duties as adult probation officer and may receive the per diem allowance authorized in Section 6025.1.

SEC. 79. Section 1208 of the Penal Code is amended to read:

1208. (a) The provisions of this section, insofar as they relate to employment, shall be operative in any county in which the board of

supervisors by ordinance finds, on the basis of employment conditions, the state of the county jail facilities, and other pertinent circumstances, that the operation of this section, insofar as it relates to employment, in that county is feasible. The provisions of this section, insofar as they relate to education, shall be operative in any county in which the board of supervisors by ordinance finds, on the basis of education conditions, the state of the county jail facilities, and other pertinent circumstances, that the operation of this section, insofar as it relates to education, in that county is feasible. In any such ordinance the board shall prescribe whether the sheriff, the probation officer, the director of the county department of corrections, or the superintendent of a county industrial farm or industrial road camp in the county shall perform the functions of the work furlough administrator. The board may, in such ordinance, provide for the performance of any or all functions of the work furlough administrator by any one or more of such persons, acting separately or jointly as to any of such functions; and may, by a subsequent ordinance, revise such provisions within the authorization of this section. The board of supervisors may also terminate the operativeness of this section, either with respect to employment or education in the county if it finds by ordinance that because of changed circumstances, the operation of this section, either with respect to employment or education in that county is no longer feasible.

Notwithstanding any other provision of law, the board of supervisors may by ordinance designate a facility for confinement of prisoners classified for the work furlough program and designate the work furlough administrator as the custodian of the facility. The work furlough administrator may, with the approval of the board of supervisors, enter into contracts with appropriate public or nonprofit private agencies to provide a facility and services for the housing, sustenance, counseling, supervision, and related services for such inmates as are eligible for work furlough. No agency entering into such a contract may itself employ any person who is in the work furlough program. The sheriff or director of the county department of corrections, as the case may be, is authorized to transfer custody of such prisoners to the work furlough administrator to be confined in such facility for the period during which they are in the work furlough program.

(b) When a person is convicted of a misdemeanor and sentenced to the county jail, or is imprisoned therein for nonpayment of a fine, for contempt, or as a condition of probation for any criminal offense, the work furlough administrator may, if he or she concludes that such person is a fit subject therefor, direct that such person be permitted to continue in his or her regular employment, if that is compatible with the requirements of subdivision (d), or may authorize the person to secure employment for himself or herself, unless the court at the time of sentencing or committing has ordered that such person not be granted work furloughs. The work furlough administrator

may, if he or she concludes that such person is a fit subject therefor, direct that such person be permitted to continue in his or her regular educational program, if that is compatible with the requirements of subdivision (d), or may authorize the person to secure education for himself or herself, unless the court at the time of sentencing has ordered that such person not be granted work furloughs.

(c) If the work furlough administrator so directs that the prisoner be permitted to continue in his or her regular employment or educational program, the administrator shall arrange for a continuation of such employment or education, so far as possible without interruption. If the prisoner does not have regular employment or a regular educational program, and the administrator has authorized the prisoner to secure employment or education for himself or herself, the prisoner may do so, and the administrator may assist him or her in doing so. Any employment or education so secured must be suitable for the prisoner. Such employment or educational program, if such educational program includes earnings by the prisoner, must be at a wage at least as high as the prevailing wage for similar work in the area where the work is performed and in accordance with the prevailing working conditions in such area. In no event may any such employment or educational program involving earnings by the prisoner be permitted where there is a labor dispute in the establishment in which the prisoner is, or is to be, employed or educated.

(d) Whenever the prisoner is not employed or being educated and between the hours or periods of employment or education, he or she shall be confined in the facility designated by the board of supervisors for work furlough confinement unless the work furlough administrator directs otherwise. If the prisoner is injured during a period of employment or education, the work furlough administrator shall have the authority to release him or her from the facility for continued medical treatment by private physicians or at medical facilities at the expense of the employer, worker's compensation insurer, or the prisoner. Such release shall not be construed as assumption of liability by the county or work furlough administrator for medical treatment obtained.

The work furlough administrator may release any prisoner classified for the work furlough program for a period not to exceed 72 hours for medical, dental, or psychiatric care, or for family emergencies or pressing business which would result in severe hardship if the release were not granted, or to attend such activities as the administrator deems may effectively promote the prisoner's successful return to the community, including, but not limited to, an attempt to secure housing, employment, entry into educational programs, or participation in community programs.

(e) The earnings of the prisoner may be collected by the work furlough administrator, and it shall be the duty of the prisoner's employer to transmit such wages to the administrator at the latter's request. Earnings levied upon pursuant to writ of execution or in

other lawful manner shall not be transmitted to the administrator. If the administrator has requested transmittal of earnings prior to levy, such request shall have priority. In a case in which the functions of the administrator are performed by a sheriff, and such sheriff receives a writ of execution for the earnings of a prisoner subject to this section but has not yet requested transmittal of the prisoner's earnings pursuant to this section, he or she shall first levy on the earnings pursuant to the writ. When an employer or educator transmits such earnings to the administrator pursuant to this subdivision he or she shall have no liability to the prisoner for such earnings. From such earnings the administrator shall pay the prisoner's board and personal expenses, both inside and outside the jail, and shall deduct so much of the costs of administration of this section as is allocable to such prisoner or if such prisoner is unable to pay such sum, such lesser sum as is reasonable, and, in an amount determined by the administrator, shall pay the support of the prisoner's dependents, if any. If sufficient funds are available after making the foregoing payments, the administrator may, with the consent of the prisoner, pay, in whole or in part, the preexisting debts of the prisoner. Any balance shall be retained until the prisoner's discharge and thereupon shall be paid to him or her.

(f) The prisoner shall be eligible for time credits pursuant to Sections 4018 and 4019.

(g) In the event the prisoner violates the conditions laid down for his or her conduct, custody, education, or employment, the work furlough administrator may order the balance of the prisoner's sentence to be spent in actual confinement.

(h) Willful failure of the prisoner to return to the place of confinement not later than the expiration of any period during which he or she is authorized to be away from the place of confinement pursuant to this section is punishable as provided in Section 4532.

(i) As used in this section, "education" includes vocational and educational training and counseling; and psychological, drug abuse, alcoholic, and other rehabilitative counseling; "educator" includes a person or institution providing such training or counseling; and "employment" includes care of children, including the daytime care of children of the prisoner.

(j) This section shall be known and may be cited as the "Cobey Work Furlough Law."

SEC. 80. Section 1215 of the Penal Code is amended to read:

1215. If the judgment is for imprisonment, or a fine and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer and by him or her detained until the judgment is complied with. Where, however, the court has suspended sentence, or where, after imposing sentence, the court has suspended the execution thereof and placed the defendant on probation, as provided in Section 1203, the defendant, if over the age of 16 years, shall be placed under the care and supervision of the probation officer of the court committing him or

her, until the expiration of the period of probation and the compliance with the terms and conditions of the sentence, or of the suspension thereof. Where, however, the probation has been terminated as provided in Section 1203, and the suspension of the sentence, or of the execution revoked, and the judgment pronounced, the defendant shall be committed to the custody of the proper officer and be detained until the judgment be complied with.

SEC. 81. Section 1278 of the Penal Code is amended to read:

1278. Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An order having been made on the _____ day of _____, 19___, by _____, a judge of the Justice Court of _____ County (or as the case may be), that _____ be held to answer upon a charge of (stating briefly the nature of the offense), upon which he or she has been admitted to bail in the sum of _____ dollars ($_____); we, _____ and _____, of _____ (stating their place of residence and occupation), hereby undertake that the above-named _____ will appear and answer any charge in any accusatory pleading based upon the acts supporting the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself or herself amenable to the orders and process of the court, and if convicted, will appear for pronouncement of judgment or grant of probation, or if he or she fails to perform either of these conditions, that we will pay to the people of the State of California the sum of _____ dollars ($_____) (inserting the sum in which the defendant is admitted to bail). If the forfeiture of this bond be ordered by the court, judgment may be summarily made and entered forthwith against the said (naming the sureties), and the defendant if he or she be a party to the bond, for the amount of their respective undertakings herein, as provided by Sections 1305 and 1306.

SEC. 82. Section 1280a of the Penal Code is amended to read:

1280a. All affidavits for the justification of bail shall set forth the amount of the bail undertaking, a notice that the affidavit shall constitute a lien upon the real property described in the affidavit immediately upon the recordation of the affidavit with the county recorder pursuant to Section 1280b, and the legal description and assessor's parcel numbers of the real estate owned by the bail, which is scheduled as showing that they each possess the qualifications provided in the preceding sections, the affidavit shall also show all encumbrances upon the real estate known to affiants and shall show the number of bonds, if any, on which each bail has qualified, within one year before the date of the affidavit, together with the amount of each such bond, the date on which, the county in which, and the name of the principal for whom each bond was executed.

The affidavit shall also state the amount of each bail's liability on bonds executed in previous years and not exonerated at the date of

the execution of the affidavit and be signed and acknowledged by the owner of the real property.

SEC. 83. Section 1287 of the Penal Code is amended to read:

1287. The bail shall be put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An indictment having been found on the _____ day of _____, 19____, in the Superior Court of the County of _____, charging _____ with the crime of _____ (designating it generally) and he or she having been admitted to bail in the sum of _____ dollars ($_____), we, _____ and _____, of _____ (stating their place of residence and occupation), hereby undertake that the above-named _____ will appear and answer any charge in any accusatory pleading based upon the acts supporting the indictment above mentioned, in whatever court it may be prosecuted, and will at all times render himself or herself amenable to the orders and process of the court, and, if convicted, will appear for pronouncement of judgment or grant of probation; or, if he or she fails to perform either of these conditions, that we will pay to the people of the State of California the sum of _____ dollars ($_____) (inserting the sum in which the defendant is admitted to bail). If the forfeiture of this bond be ordered by the court, judgment may be summarily made and entered forthwith against the said (naming the sureties, and the defendant if he or she be a party to the bond), for the amount of their respective undertakings herein, as provided by Sections 1305 and 1306.

SEC. 84. Section 1302 of the Penal Code is amended to read:

1302. If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, surrenders himself or herself to the officer to whom the commitment was directed, in the manner provided in Sections 1300 and 1301, the court shall order a return of the deposit to the defendant or to the person or persons found by the court to have deposited said money on behalf of the defendant, upon the production of the certificate of the officer showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate.

SEC. 85. Section 1310 of the Penal Code is amended to read:

1310. 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 the defendant and his or her commitment to the officer to whose custody he or she was committed at the time of giving bail, and his or her detention until legally discharged, in the following cases:

(a) When, by reason of his or her failure to appear, he or she has incurred a forfeiture of his or her bail, or of money deposited instead thereof.

(b) When it satisfactorily appears to the court that his or her bail, or either of them, are dead or insufficient, or have removed from the state.

(c) Upon an indictment being found or information filed in the cases provided in Section 985.

SEC. 86. Section 1330 of the Penal Code is amended to read:

1330. No person is obliged to attend as a witness before a court or magistrate out of the county where the witness resides, or is served with the subpoena, unless the distance be less than 150 miles from his or her place of residence to the place of trial, or unless the judge of the court in which the offense is triable, or a justice of the Supreme Court, or a judge of a superior court, or, in the case of a minor concerning whom a petition has been filed pursuant to Article 16 (commencing with Section 650) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, by the judge of the juvenile court hearing the petition, upon an affidavit of the district attorney or prosecutor, or of the defendant, or his or her counsel, or in the case involving a minor in whose behalf a petition has been filed in the juvenile court, of the probation officer approving the filing of the petition or of any party to the action, or his or her counsel, stating that he or she believes the evidence of the witness is material, and his or her attendance at the examination, trial, or hearing is material and necessary, shall endorse on the subpoena an order for the attendance of the witness.

When a subpoena duces tecum is duly issued according to any other provision of law and is served upon a custodian of records or other qualified witness as provided in Article 4 (commencing with Section 1560) of Chapter 2 of Division 11 of the Evidence Code, and his or her personal attendance is not required by the terms of the subpoena, the limitations of this section shall not apply.

SEC. 87. Section 1332 of the Penal Code is amended to read:

1332. (a) Notwithstanding the provisions of Sections 878 to 883, inclusive, when the court is satisfied, by proof on oath, that there is good cause to believe that any material witness for the prosecution or defense, whether the witness is an adult or a minor, will not appear and testify unless security is required, at any proceeding in connection with any criminal prosecution or in connection with a wardship petition pursuant to Section 602 of the Welfare and Institutions Code, the court may order the witness to enter into a written undertaking to the effect that he or she will appear and testify at the time and place ordered by the court or that he or she will forfeit an amount the court deems proper.

(b) If the witness required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the court may commit the witness, if an adult, to the custody of the sheriff, and if a minor, to the custody of the probation officer or other appropriate agency, until the witness complies or is legally discharged.

(c) When a person is committed pursuant to this section, he or she

is entitled to an automatic review of the order requiring a written undertaking and the order committing the person, by a judge or magistrate having jurisdiction over the offense other than the one who issued the order. This review shall be held not later than two days from the time of the original order of commitment.

(d) If it is determined that the witness must remain in custody, the witness is entitled to a review of that order after 10 days.

(e) When a witness has entered into an undertaking to appear, upon his or her failure to do so the undertaking is forfeited in the same manner as undertakings of bail.

SEC. 88. Section 1347 of the Penal Code is amended to read:

1347. (a) It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of a child witness, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant against the need to protect a child witness and to preserve the integrity of the court's truthfinding function. This discretion is intended to be used selectively when the facts and circumstances in the individual case present compelling evidence of the need to use these unusual procedures.

(b) Notwithstanding any other provision of law, the court in any criminal proceeding, upon written notice of the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the minor is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of a minor 10 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant, and attorneys, and communicated to the courtroom by means of two-way closed-circuit television, if the court makes all of the following findings:

(1) The minor's testimony will involve a recitation of the facts of an alleged sexual offense committed on or with the minor.

(2) The impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit television is used.

(A) Threats of serious bodily injury to be inflicted on the minor or a family member, of incarceration or deportation of the minor or a family member, or of removal of the minor from the family or dissolution of the family, in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding or to prevent the minor from reporting the alleged sexual offense or from assisting in criminal prosecution.

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

(C) Infliction of great bodily injury upon the victim during the commission of the crime.

(D) Conduct on the part of the defendant or defense counsel during the hearing or trial which causes the minor to be unable to continue his or her testimony.

In making the determination required by this section, the court shall consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor's refusal to testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary in order to obtain the minor's testimony.

(3) The equipment available for use of two-way closed-circuit television would accurately communicate the image and demeanor of the minor to the judge, jury, defendant or defendants, and attorneys.

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

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

(3) In determining whether the impact on an individual child of one or more of the four factors enumerated in paragraph (2) of subdivision (b) is so substantial that the minor is unavailable as a witness unless closed-circuit television is used, the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the support person, the prosecutor, and defense counsel present. The defendant or defendants shall not be present. The court shall conduct the questioning of the minor and shall not permit the prosecutor or defense counsel to examine the minor. The prosecutor and defense counsel shall be permitted to submit proposed questions to the court prior to the session in chambers. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(d) When the court orders the testimony of a minor to be taken in another place outside of the courtroom, the court shall do all of the following:

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

(2) Instruct the members of the jury that they are to draw no inferences from the use of two-way closed-circuit television as a means of facilitating the testimony of the minor.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the trial

on the use of two-way closed-circuit television procedures.

(4) Instruct the support witness, outside of the presence of the jury, that he or she is not to coach, cue, or in any way influence or attempt to influence the testimony of the minor.

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

(e) When the court orders the testimony of a minor to be taken in another place outside the courtroom, only the minor, a support person designated pursuant to Section 868.5, a nonuniformed bailiff, and, after consultation with the prosecution and the defense, a representative appointed by the court, shall be physically present for the testimony. A videotape shall record the image of the minor and his or her testimony, and a separate videotape shall record the image of the support person.

(f) When the court orders the testimony of a minor to be taken in another place outside the courtroom, the minor shall be brought into the judge's chambers prior to the taking of his or her testimony to meet for a reasonable period of time with the judge, the prosecutor, and defense counsel. A support person for the minor shall also be present. This meeting shall be for the purpose of explaining the court process to the child and to allow the attorneys an opportunity to establish rapport with the child to facilitate later questioning by closed-circuit television. No participant shall discuss the defendant or any of the facts of the case with the minor during this meeting.

(g) When the court orders the testimony of a minor to be taken in another place outside the courtroom, nothing in this section shall prohibit the court from ordering the minor to be brought into the courtroom for a limited purpose including the identification of the defendant or defendants as the court deems necessary.

(h) The examination shall be under oath, and the defendant's image shall be transmitted live to the witness via two-way contemporaneous closed-circuit television.

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

(j) The Judicial Council shall submit a report to the Legislature on or before January 1, 1988, summarizing the experience of courts

which have used contemporaneous closed-circuit television pursuant to this section.

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

SEC. 89. Section 1360 of the Penal Code is amended to read:

1360. The clerk or judge receiving and opening the commission and return shall immediately file it, with the affidavit mentioned in Sections 1358 and 1359, in the office of the clerk of the court in which the indictment is pending. If the commission and return is transmitted by mail, the clerk to whom it is addressed shall receive it from the post office, and open and file it in his or her office, where it must remain, unless otherwise directed by the court or judge.

SEC. 90. Section 1364 of the Penal Code is amended to read:

1364. The State Department of Mental Health shall develop a voluntary experimental treatment program that can be evaluated, limited to no more than 50 beds, for persons convicted of sex offenses against a person under the age of 14 years or of a sex offense accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury to the victim. The screening of inmates for the program shall be performed jointly by the State Department of Mental Health and the Department of Corrections, based upon program criteria, procedures, and guidelines developed by the State Department of Mental Health in consultation with the Department of Corrections.

The treatment shall only be done during the last two years of incarceration, and only persons who voluntarily consent shall be included in the program. The Department of Corrections shall inform such convicted persons of the state hospital program established pursuant to this section.

The Director of Corrections shall, if he or she receives a recommendation for such treatment, and with the consent of the convicted person, transfer, unless he or she is a security risk, the person to an appropriate state hospital designated by the State Director of Mental Health for treatment. No such transfer may occur without the approval of the medical director of the state hospital. In no event shall the person be placed on outpatient status pursuant to such treatment. In no event shall the person be released prior to his or her determinate sentence date, nor shall treatment pursuant to this section exceed the term of imprisonment imposed. The medical director of the state hospital shall make a recommendation prior to the person's release date whether the person should receive outpatient treatment as a condition of parole. If outpatient treatment is provided it shall be funded as provided in Section 5709.8 of the Welfare and Institutions Code.

If the person refuses to cooperate in his or her treatment while in the state hospital, or is found unamenable to treatment, or if the person requests a return to the Department of Corrections, the medical director of the state hospital shall cause the person to be

returned to the Department of Corrections.

Physical transfer of the inmate from the Department of Corrections to the state hospital and return shall be the responsibility of the Department of Corrections. Upon request of the medical director of the state hospital for return of the person to prison, the Director of Corrections shall immediately send for, take, and receive the person back into prison.

All days of confinement in a state hospital for testing and treatment shall be credited to the person's term of imprisonment and the provisions of Section 2931 shall apply.

SEC. 91. Section 1381 of the Penal Code is amended to read:

1381. Whenever a defendant has been convicted, in any court of this state, of the commission of a felony or misdemeanor and has been sentenced to and has entered upon a term of imprisonment in a state prison or has been sentenced to and has entered upon a term of imprisonment in a county jail for a period of more than 90 days or has been committed to and placed in a county jail for more than 90 days as a condition of probation or has been committed to and placed in an institution subject to the jurisdiction of the Department of the Youth Authority or whenever any person has been committed to the custody of the Director of Corrections pursuant to Chapter 1 (commencing with Section 3000) of Division 3 of the Welfare and Institutions Code and has entered upon his or her term of commitment, and at the time of the entry upon the term of imprisonment or commitment there is pending, in any court of this state, any other indictment, information, complaint, or any criminal proceeding wherein the defendant remains to be sentenced, the district attorney of the county in which the matters are pending shall bring the defendant to trial or for sentencing within 90 days after the person shall have delivered to said district attorney written notice of the place of his or her imprisonment or commitment and his or her desire to be brought to trial or for sentencing unless a continuance beyond the 90 days is requested or consented to by the person, in open court, and the request or consent entered upon the minutes of the court in which event the 90-day period shall commence to run anew from the date to which the consent or request continued the trial or sentencing. In the event that the defendant is not brought to trial or for sentencing within the 90 days the court in which the charge or sentencing is pending shall, on motion or suggestion of the district attorney, or of the defendant or person confined in the county jail or committed to the custody of the Director of Corrections or his or her counsel, or of the Department of Corrections, or of the Department of the Youth Authority, or on its own motion, dismiss the action. If a charge is filed against a person during the time the person is serving a sentence in any state prison or county jail of this state or while detained by the Director of Corrections pursuant to Chapter 1 (commencing with Section 3000) of Division 3 of the Welfare and Institutions Code or while detained in any institution subject to the jurisdiction of the Department of the

Youth Authority it is hereby made mandatory upon the district attorney of the county in which the charge is filed to bring it to trial within 90 days after the person shall have delivered to said district attorney written notice of the place of his or her imprisonment or commitment and his or her desire to be brought to trial upon the charge, unless a continuance is requested or consented to by the person, in open court, and the request or consent entered upon the minutes of the court, in which event the 90-day period shall commence to run anew from the date to which the request or consent continued the trial. In the event the action is not brought to trial within the 90 days the court in which the action is pending shall, on motion or suggestion of the district attorney, or of the defendant or person committed to the custody of the Director of Corrections or to a county jail or his or her counsel, or of the Department of Corrections, or of the Department of the Youth Authority, or on its own motion, dismiss the charge. The sheriff, custodian, or jailer shall endorse upon the written notice of the defendant's desire to be brought to trial or for sentencing the cause of commitment, the date of commitment, and the date of release.

SEC. 92. Section 1383 of the Penal Code is amended to read:

1383. If the defendant is not charged or tried, as provided in Section 1382, and sufficient reason therefor is shown, the court may order the action to be continued from time to time, and in the meantime may discharge the defendant from custody on his or her own undertaking of bail for his or her appearance to answer the charge at the time to which the action is continued.

SEC. 93. Section 1386 of the Penal Code is amended to read:

1386. The entry of a nolle prosequi is abolished, and neither the Attorney General nor the district attorney can discontinue or abandon a prosecution for a public offense, except as provided in Section 1385.

SEC. 94. Section 1411 of the Penal Code is amended to read:

1411. If the ownership of the property stolen or embezzled and the address of the owner, and the address of the owner of a security interest therein, can be reasonably ascertained, the peace officer who took custody of the property shall notify the owner, and a person having a security interest therein, by letter of the location of the property and the method by which the owner may obtain it. This notice shall be given upon the conviction of a person for an offense involving the theft, embezzlement, or possession of the property, or if a conviction was not obtained, upon the making of a decision by the district attorney not to file the case or upon the termination of the proceedings in the case. Except as provided in Section 217 of the Welfare and Institutions Code, if the property stolen or embezzled is not claimed by the owner before the expiration of three months after the giving of this notice, or, in any case in which such a notice is not given, before the expiration of six months from the conviction of a person for an offense involving the theft, embezzlement, or possession of the property, or if a conviction was not obtained, then

from the time the property came into the possession of the peace officer or the case involving the person from whom it was obtained is disposed of, whichever is later, the magistrate or other officer having it in custody may, on the payment of the necessary expenses incurred in its preservation, deliver it to the county treasurer or other proper county officer, by whom it shall be sold and the proceeds paid into the county treasury. However, notwithstanding any other provision of law, if the person from whom custody of the property was taken is a secondhand dealer or licensed pawnbroker and reasonable but unsuccessful efforts have been made to notify the owner of the property and the property is no longer needed for the criminal proceeding, the property shall be returned to the secondhand dealer or pawnbroker who had custody of the property and be treated as regularly acquired property. If the property is transferred to the county purchasing agent it may be sold in the manner provided by Article 7 (commencing with Section 25500) of Chapter 5 of Part 2 of Division 2 of Title 3 of the Government Code for the sale of surplus personal property. If the county officer determines that any of the property transferred to him or her for sale is needed for a public use, the property may be retained by the county and need not be sold. The magistrate or other officer having the property in custody may, however, provide for the sale of the property in the manner provided for the sale of unclaimed property which has been held for at least three months pursuant to Section 2080.4 of the Civil Code.

SEC. 95. Section 1463.01 of the Penal Code is repealed.

SEC. 96. Section 1463.5 of the Penal Code is amended to read:

1463.5. The distribution of funds required pursuant to Section 1463, and the distribution of assessments imposed and collected under Section 1464 and Section 42006 of the Vehicle Code, may be determined and made upon the basis of probability sampling. The sampling shall be procedural in nature and shall not substantively modify the distributions required pursuant to Sections 1463 and 1464 and Section 42006 of the Vehicle Code. The procedure for the sampling shall be prescribed by the county auditor and the procedure and its implementation shall be approved by the board of supervisors and a majority of the cities within a county. The reasonableness of the distribution shall be verified during the annual audit performed pursuant to Section 71393 of the Government Code.

SEC. 97. Section 1463.22 of the Penal Code is amended to read:

1463.22. (a) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, ten dollars ($10) for each alleged violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and allocated to defray costs of municipal and justice courts incurred in administering Sections 16028, 16030, and 16031 of the Vehicle Code. The amount required to be deposited in a special account pursuant to this subdivision shall be deposited regardless of whether the charge is dismissed pursuant to subdivision (e) of Section 16028

of the Vehicle Code or otherwise. Any moneys in the special account in excess of the amount required to defray those costs shall be redeposited and distributed by the county treasurer pursuant to Section 1463.

(b) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, three dollars ($3) for each conviction for a violation of Section 16028 of the Vehicle Code shall be initially deposited by the county treasurer in a special account, and shall be transmitted once per month to the Controller for deposit in the Motor Vehicle Account in the State Transportation Fund. These moneys shall be available, when appropriated, to defray the department's administrative costs incurred pursuant to Sections 16031, 16032, 16034, and 16035 of the Vehicle Code. It is the intent of this subdivision to provide sufficient revenues to pay for all of the department's costs in administering Sections 16031, 16032, 16034, and 16035 of the Vehicle Code.

(c) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, ten dollars ($10) for each alleged violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and shall be transmitted monthly to the Controller for deposit in the General Fund. The amount required to be deposited in the county's special account pursuant to this subdivision shall be deposited regardless of whether the charge is dismissed pursuant to subdivision (e) of Section 16028 of the Vehicle Code or otherwise.

SEC. 99. Section 1538.5 of the Penal Code 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. If the offense was initiated by indictment or if the offense was initiated by complaint and no motion was made at the preliminary hearing, the defendant shall have the right to fully litigate the validity of a search or seizure on the basis of the evidence presented at a special hearing. If the motion was made at the preliminary hearing, unless otherwise agreed to by all parties, evidence presented at the special hearing

shall be limited to the transcript of the preliminary hearing and to evidence which could not reasonably have been presented at the preliminary hearing, except that the people may recall witnesses who testified at the preliminary hearing. If the people object to the presentation of evidence at the special hearing on the grounds that the evidence could reasonably have been presented at the preliminary hearing, the defendant shall be entitled to an in camera hearing to determine that issue. The superior court shall base its ruling on all evidence presented at the special hearing and on the transcript of the preliminary hearing, and the findings of the magistrate shall be binding on the superior court as to evidence or property not affected by evidence presented at the 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 or her 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 or she is in custody and not returned to custody unless the proceedings are resumed in the trial court and he or she 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 or she is charged with a capital offense in a case where the proof is evident and the presumption great, or (2) he or she 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 or she 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 the 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 or she 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 or she 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 or her own recognizance pursuant to Section 1318.

(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 or her. 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 or she 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. 100. Section 1547 of the Penal Code is amended to read:

1547. (a) The Governor may offer a reward of not more than ten thousand dollars ($10,000), payable out of the General Fund, for information leading to the arrest and conviction of any of the following:

(1) Any convict who has escaped from a state prison, prison camp, prison farm, or the custody of any prison officer or employee or as provided in Section 3059 or 4530.

(2) Any person who has committed, or is charged with the commission of, an offense punishable with death.

(3) Any person engaged in the robbery or hijacking of, or any attempt to rob or hijack, any person upon or in charge of, in whole or in part, any public conveyance engaged at the time in carrying passengers within this state.

(4) Any person who kills, assaults with a deadly weapon, or inflicts serious bodily harm upon a police officer who is acting in the line of duty.

(5) Any person who has committed a crime involving the burning or bombing of public property, including any public hospital housed in a privately owned facility.

(6) Any person who has committed a crime involving the burning or bombing of any private hospital. A reward may be offered by the Governor in conjunction with such a crime only if a reward in conjunction with the same crime is offered by the hospital, or any other public or private donor on its behalf. The amount of the reward offered by the Governor shall not exceed the aggregate amount offered privately, or ten thousand dollars ($10,000), whichever is less. Nothing in this paragraph shall preclude a private hospital, or any public or private donor on its behalf, from offering a reward in an amount exceeding ten thousand dollars ($10,000). If a person providing information for a reward under this paragraph so requests, his or her name and address shall remain confidential. This confidentiality, however, shall not preclude or obstruct the investigations of law enforcement authorities.

(7) Any person who commits a violation of Section 11413.

(b) The reward shall be paid to the person giving the information, immediately upon the conviction of the person so arrested.

(c) As used in this section, "hijacking" means an unauthorized person causing, or attempting to cause, by violence or threat of violence, a public conveyance to go to an unauthorized destination.

SEC. 101. Section 1549 of the Penal Code is amended to read:

1549. When it is desired to have returned to this state a person charged in this state with a crime, and the person is imprisoned or is held under criminal proceedings then pending against him or her in another state, the Governor of this state may agree with the executive authority of the other state for the extradition of the person before the conclusion of the proceedings or his or her term of sentence in the other state, upon the condition that the person be returned to the other state at the expense of this state as soon as the prosecution in this state is terminated.

The Governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in Section 1548.2 with having violated the laws of the demanding state even though such person left the demanding state involuntarily.

SEC. 102. Section 1549.1 of the Penal Code is amended to read:

1549.1. The Governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in the other state in the manner provided in Section 1548.2

with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand. The provisions of this chapter, not otherwise inconsistent, shall apply to those cases, even though the accused was not in the demanding state at the time of the commission of the crime, and has not fled therefrom. Neither the demand, the oath, nor any proceedings under this chapter pursuant to this section need state or show that the accused has fled from justice from, or at the time of the commission of the crime was in, the demanding or other state.

SEC. 103. Section 1550 of the Penal Code is amended to read:

1550. Every peace officer or other person empowered to make the arrest hereunder shall have the same authority, in arresting the accused, to command assistance therefor as the persons designated in Section 150. Failure or refusal to render that assistance is a violation of Section 150.

SEC. 104. Section 1551.1 of the Penal Code is amended to read:

1551.1. The arrest of a person may also be lawfully made by any peace officer, without a warrant, upon reasonable information that the accused stands charged in the courts of any other state with a crime punishable by death or imprisonment for a term exceeding one year, or that the person has been convicted of a crime punishable in the state of conviction by imprisonment for a term exceeding one year and thereafter escaped from confinement or violated the terms of his or her bail, probation or parole. When so arrested the accused shall be taken before a magistrate with all practicable speed and complaint shall be made against him or her under oath setting forth the ground for the arrest as in Section 1551.

SEC. 105. Section 1601 of the Penal Code is amended to read:

1601. (a) In the case of any person charged with and found incompetent on a charge of, convicted of, or found not guilty by reason of insanity of murder, mayhem, a violation of Section 207 or 209 in which the victim suffers intentionally inflicted great bodily injury, robbery with a deadly or dangerous weapon or in which the victim suffers great bodily injury, a violation of subdivision (a) or (b) of Section 451, a violation of subdivision 2 or 3 of Section 261, a violation of Section 459 in the first degree, a violation of Section 220 in which the victim suffers great bodily injury, a violation of Section 288, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310, or any felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, outpatient status under this title shall not be available until such person has actually been confined in a state hospital or other facility for 180 days or more after having been committed under the provisions of law specified in Section 1600.

(b) In the case of any person charged with, and found incompetent on a charge of, or convicted of, any misdemeanor or any felony other than those described in subdivision (a), or found not guilty of any misdemeanor by reason of insanity, outpatient status

under this title may be granted by the court prior to actual confinement in a state hospital or other treatment facility under the provisions of law specified in Section 1600.

SEC. 106. Section 1613 of the Penal Code is repealed.

SEC. 107. Section 2037 of the Penal Code is amended to read:

2037. There may be transferred to and confined in the Deuel Vocational Institution any male, subject to the custody, control and discipline of the Director of Corrections, or any male, subject to the custody, control and discipline of the Youth Authority who has been committed to the Youth Authority under the provisions of Section 1731.5 of the Welfare and Institutions Code, who the Director of Corrections or Youth Authority, as the case may be, believes will be benefited by confinement in such an institution.

SEC. 108. Section 2041 of the Penal Code is amended to read:

2041. Part 3 (commencing with Section 2000) shall apply to the Deuel Vocational Institution and to the persons confined therein so far as those provisions may be applicable. Whenever the name California Vocational Institution appears in any statute, it shall be deemed for all purposes to refer to the Deuel Vocational Institution.

SEC. 109. Section 2043.5 of the Penal Code is amended to read:

2043.5. Part 3 (commencing with Section 2000) shall apply to the California Correctional Center at Susanville and to the persons confined therein, insofar as those provisions may be applicable.

SEC. 110. Section 2045.1 of the Penal Code is amended to read:

2045.1. The prison authorized to be established by Section 2045 shall be a medium security type institution. Its primary purpose shall be to provide custody, care, industrial, vocational, and other training to persons confined therein. However, the Director of Corrections may designate a portion or all of the prison to serve the same purposes and to have the same security standards as the institution provided for by Article 4 (commencing at Section 2035) of Chapter 1 of Title 1 of Part 3.

SEC. 111. Section 2045.6 of the Penal Code is amended to read:

2045.6. The provisions of Part 3 (commencing with Section 2000) apply to the institution and to the persons confined therein insofar as those provisions may be applicable.

SEC. 112. Section 2046.1 of the Penal Code is amended to read:

2046.1. The prison authorized to be established by Section 2046 shall be a medium security type institution. Its primary purpose shall be to provide custody, care, industrial, vocational, and other training to persons confined therein.

SEC. 113. Section 2046.6 of the Penal Code is amended to read:

2046.6. The provisions of Part 3 (commencing with Section 2000) shall apply to the the prison and to the persons confined therein insofar as those provisions may be applicable.

SEC. 114. Section 2048.6 of the Penal Code is amended to read:

2048.6. The provisions of Part 3 (commencing with Section 2000) apply to the California Correctional Institution at Tehachapi and to the persons confined therein insofar as those provisions may be

applicable.

SEC. 115. Section 2049.6 of the Penal Code is amended to read:

2049.6. The provisions of Part 3 (commencing with Section 2000) shall apply to the Special Security Facility and to the persons confined therein insofar as those provisions may be applicable.

SEC. 116. Section 2060 of the Penal Code is amended to read:

2060. For the purposes of Sections 11009 and 11030 of the Government Code, the following constitute, among other proper purposes, state business for officers and employees of the department for which such officers and employees shall be allowed actual and necessary traveling expenses when the state travel and expense have been approved by the Governor and the Director of Finance as provided in that section.

Attending meetings of any national association or organization, having as its principal purpose the study of matters relating to penology, including prison management and paroles, or to a particular field thereof, conferring with officers or employees of the United States relative to problems relating to penology, including prison management and paroles, in California, conferring with officers or employees of other states engaged in the performance of similar duties, and obtaining information useful to the department in the conduct of its work.

SEC. 117. Section 2084 of the Penal Code is amended to read:

2084. The department shall provide each prisoner with a bed, sufficient covering of blankets, and with garments of substantial material and of distinctive manufacture, and with sufficient plain and wholesome food of such variety as may be most conducive to good health.

SEC. 118. Section 2601 of the Penal Code is amended to read:

2601. Notwithstanding any other provision of law, each person described in Section 2600 shall have the following civil rights:

(a) To inherit, own, sell, or convey real or personal property, including all written and artistic material produced or created by such person during the period of imprisonment; provided that, to the extent authorized in Section 2600, the Department of Corrections may restrict or prohibit sales or conveyances that are made for business purposes.

(b) To correspond, confidentially, with any member of the State Bar or holder of public office, provided that the prison authorities may open and inspect incoming mail to search for contraband.

(c) To purchase, receive, read, and permit other inmates to read any and all legal materials, newspapers, periodicals, and books accepted for distribution by the United States Post Office, except those which describe the making of any weapon, explosive, poison, or destructive device, or which in the judgment of the Director of Corrections, in the director's sole discretion, depicts, portrays, or describes a sexual assault upon a correctional employee. Nothing in this section shall be construed as limiting the right of prison authorities (1) to open and inspect any and all packages received by

an inmate and (2) to establish reasonable restrictions as to the number of newspapers, magazines, and books that the inmate may have in his or her cell or elsewhere in the prison at one time.

(d) To have personal visits; provided that the department may provide such restrictions as are necessary for the reasonable security of the institution.

(e) To initiate civil actions.

(f) To marry.

(g) To create a power of appointment.

(h) To make a will.

(i) To receive all benefits provided for in Sections 3370 and 3371 of the Labor Code and in Section 5069.

SEC. 119. Section 2622 of the Penal Code is amended to read:

2622. When the order for personal appearance is not made pursuant to Section 2620 or Section 2621 the deposition of the prisoner may be taken in the manner provided for in the case of a witness who is sick, and Chapter 4 (commencing with Section 1335) of Title 10 of Part 2 shall, so far as applicable, govern in the application for and in the taking and use of that deposition. The deposition may be taken before any magistrate or notary public of the county in which the prison is situated; or in case the defendant is unable to pay for taking the deposition, before an officer of the prison designated by the board, whose duty it shall be to act without compensation. Every officer before whom testimony shall be taken under this section, shall have authority to administer, and shall administer, an oath to the witness that his or her testimony shall be the truth, the whole truth, and nothing but the truth.

SEC. 120. Section 2653 of the Penal Code is repealed.

SEC. 121. Section 2654 of the Penal Code is repealed.

SEC. 122. Section 2655 of the Penal Code is repealed.

SEC. 123. Section 2680 of the Penal Code is amended to read:

2680. (a) If it is determined by the attending physician that a confined person should be administered organic therapy, the person shall be advised and informed of his or her rights under this article, and or she shall be provided a copy of this article.

(b) All provisions of this article shall apply to prisoners confined under the provisions of this part in public or private hospitals, sanitariums, and similar facilities, and to the personnel of such facilities.

(c) A person shall be entitled to communicate in writing and by visiting with his or her parents, guardian, or conservator regarding any proposed administration of any organic therapy. The communication shall not be censored. The person shall be entitled to communicate in writing with his or her attorney pursuant to Section 2600.

(d) Nothing in this article shall prohibit the attending physician from terminating organic therapy prior to the period authorized for that therapy by the court, pursuant to Section 2679.

SEC. 124. Section 2691 of the Penal Code is amended to read:

2691. No person imprisoned for a felony listed in Section 667.6 shall be removed or released under Section 2690 from the detention institution where he or she is confined for the purpose of attending college classes in any city or county nor shall that person be placed in a community correctional center pursuant to Chapter 9.5 (commencing with Section 6250) of Title 7 of Part 3. No person under the jurisdiction of the adult court and confined under the jurisdiction of the Department of the Youth Authority for conviction of a felony listed in Section 667.6 shall be removed or released from the place of confinement for attendance at any educational institution in any city or county.

SEC. 125. Section 2880 of the Penal Code is amended to read:

2880. To the extent and insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress, all goods, wares, and merchandise manufactured, produced, or mined wholly or in part by prisoners (except prisoners on parole or probation) or manufactured, produced, or mined wholly or in part in any state prison, transported into the State of California and remaining herein for use, consumption, sale, or storage, shall upon arrival and delivery in this state be subject to the operation and effect of the laws of this state to the same extent and in the same manner as though those commodities had been manufactured, produced, or mined in this state by prisoners or in any state prison, and shall not be exempt therefrom by reason of being introduced in the original package or otherwise.

SEC. 126. Section 2884 of the Penal Code is amended to read:

2884. No person, firm, partnership, association or corporation within this state shall sell or offer, trade, consign, keep, expose, or display for sale any goods, wares or merchandise manufactured, assembled, produced, or mined in whole or in part by prisoners in any penitentiary, prison, reformatory, or other establishment in which prison labor is employed, unless those prison-made goods, wares, or merchandise have first been disinfected or sterilized in a plant located in California and licensed by the State Department of Health Services in accordance with any regulations of the State Department of Health Services now in force or which later may be made effective.

It is hereby further provided that certificate of that disinfection or sterilization must accompany, be stamped on or attached to those goods, wares, or merchandise in a manner or form prescribed by the officials of the State of California responsible for the enforcement of this article.

SEC. 127. Section 2900 of the Penal Code is amended to read:

2900. (a) The term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant into the custody of the Director of Corrections at the place designated by the Director of Corrections as a place for the reception of persons convicted of felonies.

(b) Except as otherwise provided in this section, the place of

reception shall be an institution under the jurisdiction of the Director of Corrections.

(1) As an emergency measure, the Director of Corrections may direct that persons convicted of felonies may be received and detained in jails or other facilities and that the judgment will commence to run upon the actual delivery of the defendant into such place and that any persons previously received and confined for conviction of a felony may be, as an emergency, temporarily housed at such place and the time during which such person is there shall be computed as a part of the term of judgment.

(2) In any case in which, pursuant to the agreement on detainers or other provision of law, a prisoner of another jurisdiction is, before completion of actual confinement in a penal or correctional institution of a jurisdiction other than the State of California, sentenced by a California court to a term of imprisonment for a violation of California law, and the judge of the California court orders that the California sentence shall run concurrently with the sentence which such person is already serving, the Director of Corrections shall designate the institution of the other jurisdiction as the place for reception of such person within the meaning of the preceding provisions of this section. He may also designate the place in California for reception of such person in the event that actual confinement under the prior sentence ends before the period of actual confinement required under the California sentence.

(3) In any case in which a person committed to the Director of Corrections is subsequently committed to a penal or correctional institution of another jurisdiction, the subsequent commitment is ordered to be served concurrently with the California commitment, the prisoner is placed in a penal or correctional institution of the other jurisdiction, and the prisoner is not received by the Director of Corrections pursuant to subdivision (a), the Director of Corrections shall designate the institution of the other jurisdiction as the place for reception and service of the California term.

(c) Except as provided in this section, all time served in an institution designated by the Director of Corrections shall be credited as service of the term of imprisonment.

(1) If a person is ordered released by a court from the custody and jurisdiction of the Director of Corrections pursuant to Section 1272 or 1506 or any other provision of law permitting the legal release of prisoners, time during which the person was released shall not be credited as service of the prison term.

(2) If a prisoner escapes from the custody and jurisdiction of the Director of Corrections, the prisoner shall be deemed an escapee and fugitive from justice, until the prisoner is available to return to the custody of the Director of Corrections or the State of California. Time during which the prisoner is an escapee shall not be credited as service of the prison term.

(d) The Department of Corrections may contract for the use of any facility of the state or political subdivision thereof to care for

persons received in accordance with this section.

SEC. 128. Section 3051 of the Penal Code is repealed.

SEC. 129. Section 3405 of the Penal Code is amended to read:

3405. No condition or restriction upon the obtaining of an abortion by a prisoner, pursuant to the Therapeutic Abortion Act (Chapter 11 (commencing with Section 25950), Division 20 of the Health and Safety Code), other than those contained in that act, shall be imposed. Prisoners found to be pregnant and desiring abortions, shall be permitted to determine their eligibility for an abortion pursuant to law, and if determined to be eligible, shall be permitted to obtain an abortion.

The rights provided for females by this section shall be posted in at least one conspicuous place to which all female prisoners have access.

SEC. 130. Section 3417 of the Penal Code is amended to read:

3417. Subject to reasonable rules and regulations promulgated pursuant to Section 3414, the Department of Corrections shall admit to the program any applicant whose child was born prior to the receipt of the inmate by the department, if all of the following requirements are met:

(a) The applicant has a probable release or parole date with a maximum time to be served of six years, calculated after deduction of any possible good time credit.

(b) The applicant was the primary caretaker of the infant prior to incarceration. "Primary caretaker" as used in this chapter means a parent who has consistently assumed responsibility for the housing, health, and safety of the child prior to incarceration. A parent who, in the best interests of the child, has arranged for temporary care for the child in the home of a relative or other responsible adult shall not for that reason be excluded from the category, "primary caretaker."

(c) The applicant had not been found to be an unfit parent in any court proceeding. An inmate applicant shall not be denied the opportunity to participate in the program based in whole or in part on a determination that she is an unfit mother unless that decision is made pursuant to Section 232 of the Civil Code, Section 2625, or Section 300 of the Welfare and Institutions Code.

(d) The Department of Corrections shall determine if the applicant meets the requirements of this section within 30 days of the parent's application to the program. The department shall establish an appeal procedure for the applicant to appeal an adverse decision by the department.

SEC. 131. Section 3704.5 of the Penal Code is amended to read:

3704.5. Any defendant who, on the effective date of the section is in a state hospital under court order pursuant to Section 3703, as that section read immediately preceding that effective date, shall be transferred to a medical facility of the Department of Corrections, designated by the director of such department, and there kept in safe confinement until his or her reason is restored. Section 3704 shall apply when the defendant recovers his or her sanity.

SEC. 132. Section 4011.6 of the Penal Code is amended to read:

4011.6. In any case in which it appears to the person in charge of a county jail, city jail, or juvenile detention facility, or to any judge of a court in the county in which the jail or juvenile detention facility is located that a person in custody in that jail or juvenile detention facility may be mentally disordered, he or she may cause the prisoner to be taken to a facility for 72-hour treatment and evaluation pursuant to Section 5150 of the Welfare and Institutions Code and he or she shall inform the facility in writing which shall be confidential, of the reasons that the person is being taken to the facility. The local mental health director or his or her designee may examine the prisoner prior to transfer to a facility for treatment and evaluation. Thereupon, the provisions of Article 1 (commencing with Section 5150), Article 4 (commencing with Section 5250), Article 4.5 (commencing with Section 5260), Article 5 (commencing with Section 5275), Article 6 (commencing with Section 5300), and Article 7 (commencing with Section 5325) of Chapter 2 and Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code shall apply to the prisoner.

Where the court causes the prisoner to be transferred to a 72-hour facility, the court shall forthwith notify the local mental health director or his or her designee, the prosecuting attorney, and counsel for the prisoner in the criminal or juvenile proceedings about that transfer. Where the person in charge of the jail or juvenile detention facility causes the transfer of the prisoner to a 72-hour facility the person shall immediately notify the local mental health director or his or her designee and each court within the county where the prisoner has a pending proceeding about the transfer; upon notification by the person in charge of the jail or juvenile detention facility the court shall forthwith notify counsel for the prisoner and the prosecuting attorney in the criminal or juvenile proceedings about that transfer.

If a prisoner is detained in, or remanded to, a facility pursuant to those articles of the Welfare and Institutions Code, the facility shall transmit a report, which shall be confidential, to the person in charge of the jail or juvenile detention facility or judge of the court who caused the prisoner to be taken to the facility and to the local mental health director or his or her designee, concerning the condition of the prisoner. A new report shall be transmitted at the end of each period of confinement provided for in those articles, upon conversion to voluntary status, and upon filing of temporary letter of conservatorship.

A prisoner who has been transferred to an inpatient facility pursuant to this section, may convert to voluntary inpatient status without obtaining the consent of the court, the person in charge of the jail or juvenile detention facilty, or the local mental health director. At the beginning of that conversion to voluntary status, the person in charge of the facility shall transmit a report to the person in charge of the jail or juvenile detention facility or judge of the court

who caused the prisoner to be taken to the facility, counsel for the prisoner, prosecuting attorney, and local mental health director or his or her designee.

If the prisoner is detained in, or remanded to, a facility pursuant to those articles of the Welfare and Institutions Code, the time passed therein shall count as part of the prisoner's sentence. When the prisoner is so detained or remanded, the person in charge of the jail or juvenile detention facility shall advise the professional person in charge of the facility of the expiration date of the prisoner's sentence. If the prisoner is to be released from the facility before such expiration date, the professional person in charge shall notify the local mental health director or his or her designee, counsel for the prisoner, the prosecuting attorney, and the person in charge of the jail or juvenile detention facility, who shall send for, take, and receive the prisoner back into the jail or juvenile detention facility.

A defendant, either charged with or convicted of a criminal offense, or a minor alleged to be within the jurisdiction of the juvenile court may be concurrently subject to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

If a prisoner is detained in a facility pursuant to those articles of the Welfare and Institutions Code and if the person in charge of the facility determines that arraignment or trial would be detrimental to the well-being of the prisoner, the time spent therein shall not be computed in any statutory time requirements for arraignment or trial in any pending criminal or juvenile proceedings. Otherwise, nothing contained herein shall affect any statutory time requirements for arraignment or trial in any pending criminal or juvenile proceedings.

For purposes of this section, the term "juvenile detention facility" includes any state, county, or private home or institution in which wards or dependent children of the juvenile court or persons awaiting a hearing before the juvenile court are detained.

SEC. 133. Section 4015 of the Penal Code is amended to read:

4015. The sheriff shall receive all persons committed to jail by competent authority. The board of supervisors shall provide the sheriff with necessary food, clothing, and bedding, for those prisoners, which shall be of a quality and quantity at least equal to the minimum standards and requirements prescribed by the Board of Corrections for the feeding, clothing, and care of prisoners in all county, city and other local jails and detention facilities. Except as provided in Section 4016, the expenses thereof shall be paid out of the county treasury.

SEC. 134. Section 4028 of the Penal Code is amended to read:

4028. No condition or restriction upon the obtaining of an abortion by a female detained in any local detention facility, pursuant to the Therapeutic Abortion Act (Chapter 11 (commencing with Section 25950), Division 20 of the Health and Safety Code), other than those contained in that act, shall be

imposed. Females found to be pregnant and desiring abortions shall be permitted to determine their eligibility for an abortion pursuant to law, and if determined to be eligible, shall be permitted to obtain an abortion.

For the purposes of this section, "local detention facility" means any city, county, or regional facility used for the confinement of any female person for more than 24 hours.

The rights provided for females by this section shall be posted in at least one conspicuous place to which all female prisoners have access.

SEC. 135. Section 4104 of the Penal Code is amended to read:

4104. Any board of supervisors having adopted a resolution of intention to establish an industrial farm or industrial road camp shall ascertain and enter in its minutes the following facts:

(a) The number of persons sentenced to imprisonment in the county jail during the fiscal year last preceding the adoption of the resolution of intention.

(b) The total number of days for which all persons were imprisoned in the county jail during that fiscal year.

(c) The number of persons sentenced from the superior court of the county to any state prison upon conviction of a violation of Section 270 or Section 270a during that fiscal year.

(d) The total number of days for which all persons so sentenced to state prisons were therein imprisoned during that fiscal year.

SEC. 136. Section 4465.3 of the Penal Code is amended to read:

4465.3. Money in the fund shall be allocated in accordance with the provisions of Chapter 444 of the Statutes of 1984.

SEC. 137. Section 4530 of the Penal Code is amended to read:

4530. (a) Every prisoner confined in a state prison who, by force or violence, escapes or attempts to escape therefrom and every prisoner committed to a state prison who, by force or violence, escapes or attempts to escape while being conveyed to or from such prison or any other state prison, or any prison road camp, prison forestry camp, or other prison camp or prison farm or any other place while under the custody of prison officials, officers or employees; or who, by force or violence, escapes or attempts to escape from any prison road camp, prison forestry camp, or other prison camp or prison farm or other place while under the custody of prison officials, officers or employees; or who, by force or violence, escapes or attempts to escape while at work outside or away from prison under custody of prison officials, officers, or employees, is punishable by imprisonment in a state prison for a term of two, four, or six years. The second term of imprisonment of a person convicted under this subdivision shall commence from the time he would otherwise have been discharged from prison. No additional probation report shall be required with respect to such offense.

(b) Every prisoner who commits an escape or attempts an escape as described in subdivision (a), without force or violence, is punishable by imprisonment in the state prison for 16 months, or two

or three years to be served consecutively. No additional probation report shall be required with respect to such offense.

(c) The willful failure of a prisoner who is employed or continuing his education, or who is authorized to secure employment or education, or who is temporarily released pursuant to Section 2690, 2910, or 6254, or Section 3306 of the Welfare and Institutions Code, to return to the place of confinement not later than the expiration of a period during which he or she is authorized to be away from the place of confinement, is an escape from the place of confinement punishable as provided in this section. A conviction of a violation of this subdivision, not involving force or violence, shall not be charged as a prior felony conviction in any subsequent prosecution for a public offense.

SEC. 139. Section 4851 of the Penal Code is amended to read:

4851. In all cases where the Board of Prison Terms has made a recommendation favorable to the applicant and in those cases referred by the Governor, notwithstanding an adverse recommendation, the application, together with all papers and documents relied upon in support of and in opposition to the application, including prison records and recommendation of the Board of Prison Terms, shall be forwarded to the Clerk of the Supreme Court for consideration of the justices.

SEC. 140. Section 4852.03 of the Penal Code is amended to read:

4852.03. The period of rehabilitation shall begin to run upon the discharge of the petitioner from custody due to his or her completion of the term to which he or she was sentenced or upon his or her release on parole or probation, whichever is sooner. For purposes of this chapter, the period of rehabilitation shall constitute three years' residence in this state, plus a period of time determined by the following rules:

(1) To the three years there shall be added four years in the case of any person convicted of violating Section 187, 209, 219, 4500 or 12310, or subdivision (a) of Section 1672 of the Military and Veterans Code, or of committing any other offense which carries a life sentence.

(2) To the three years there shall be added two years in the case of any person convicted of committing any offense which is not listed in subdivision (1) and which does not carry a life sentence.

(3) The trial court hearing the application for the certificate of rehabilitation may, if the defendant was ordered to serve consecutive sentences, order that his or her statutory period of rehabilitation be extended for an additional period of time which when combined with the time already served will not exceed the period prescribed by statute for the sum of the maximum penalties for all such crimes.

(4) Any person who was discharged after completion of his or her term or was released on parole before May 13, 1943, is not subject to the periods of rehabilitation set forth in these rules.

Unless and until the period of rehabilitation, as stipulated herein,

has passed, the petitioner shall be ineligible to file his or her petition for a certificate of rehabilitation with the court. Any certificate of rehabilitation which is issued and under which the petitioner has not fulfilled the requirements of this chapter shall be void.

A change of residence within this state does not interrupt the period of rehabilitation prescribed by this section.

SEC. 141. Section 4852.15 of the Penal Code is amended to read:

4852.15. Nothing in this chapter shall be construed to abridge or impair the power or authority conferred by law on any officer, board, or tribunal to revoke or suspend any right, privilege, or franchise for any act or omission not involved in his or her conviction, or to require the reinstatement of the right or privilege to practice or carry on any profession or occupation the practice or conduct of which requires the possession or obtaining of a license, permit, or certificate. Nothing in this chapter shall affect any provision of Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or the power or authority conferred by law on the Board of Medical Examiners therein, or the power or authority conferred by law upon any board that issues a certificate permitting any person to practice or apply his or her art or profession on the person of another. Nothing in this chapter shall affect any provision of Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code or the power or authority in relation to attorneys at law and the practice of the law in the State of California conferred by law upon or otherwise possessed by the courts, or the power or authority conferred by law upon the State Bar of California or any board or committee thereof.

SEC. 142. Section 4852.17 of the Penal Code is amended to read:

4852.17. Whenever a person is issued a certificate of rehabilitation or granted a pardon from the Governor under this chapter, the fact shall be immediately reported to the Department of Justice by the court, Governor, officer, or governmental agency by whose official action the certificate is issued or the pardon granted. The Department of Justice shall immediately record the facts so reported on the former criminal record of the person, and transmit those facts to the Federal Bureau of Investigation at Washington, D.C. When the criminal record is thereafter reported by the department, it shall also report the fact that the person has received a certificate of rehabilitation, or pardon, or both.

Whenever a person is granted a full and unconditional pardon by the Governor, based upon a certificate of rehabilitation, the pardon shall entitle the person to exercise thereafter all civil and political rights of citizenship, including but not limited to: (1) the right to vote; (2) the right to own, possess, and keep any type of firearm that may lawfully be owned and possessed by other citizens; except that this right shall not be restored, and Sections 12001 and 12021 shall apply, if the person was ever convicted of a felony involving the use of a dangerous weapon.

SEC. 143. Section 4853 of the Penal Code is amended to read:

4853. In all cases in which a full pardon has been granted by the Governor of this state or will hereafter be granted by the Governor to a person convicted of an offense to which the pardon applies, it shall operate to restore to the convicted person, all the rights, privileges, and franchises of which he or she has been deprived in consequence of that conviction or by reason of any matter involved therein; provided, that nothing herein contained shall abridge or impair the power or authority conferred by law on any board or tribunal to revoke or suspend any right, privilege or franchise for any act or omission not involved in the conviction; provided further, that nothing in this article shall affect any of the provisions of the Medical Practice Act (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code) or the power or authority conferred by law on the Board of Medical Examiners therein, or the power or authority conferred by law upon any board that issues a certificate which permits any person or persons to apply his or her or their art or profession on the person of another.

SEC. 144. Section 4854 of the Penal Code is amended to read:

4854. In the granting of a pardon to a person, the Governor may provide that the person is entitled to exercise the right to own, possess and keep any type of firearm that may lawfully be owned and possessed by other citizens; except that this right shall not be restored, and Sections 12001 and 12021 shall apply, if the person was ever convicted of a felony involving the use of a dangerous weapon.

SEC. 145. Section 5005 of the Penal Code is amended to read:

5005. The department may maintain a canteen at any prison or institution under its jurisdiction for the sale to persons confined therein of toilet articles, candy, tobacco products, notions, and other sundries, and may provide the necessary facilities, equipment, personnel, and merchandise therefor. The director shall specify what commodities shall be sold therein. The sale prices of the articles offered for sale shall be fixed by the director at the amounts as will, as far as possible, render each canteen self-supporting. The department may undertake to insure against damage or loss canteen and handicraft materials, supplies and equipment owned by the Inmate Welfare Fund of the Department of Corrections as provided in Section 5006.

The canteen operations at any prison or institution referred to in this section shall be audited biennially by the Department of Finance; and at the end of each intervening fiscal year, each prison or institution shall prepare a statement of operations. At least one copy of any audit report or statement of operations shall be posted at the canteen and at least one copy shall be available to inmates at the library of each prison or institution.

SEC. 146. Section 5051 of the Penal Code is amended to read:

5051. The director shall be appointed by the Governor with the advice and consent of the Senate. He or she shall hold office at the pleasure of the Governor, but before the director may be removed, charges against him or her, which charges may be preferred by any

person, shall be heard by the Board of Corrections. The Board of Corrections shall make detailed findings with respect to the charges and submit the findings to the Governor. The Governor may, but need not, abide by the findings of the Board of Corrections, and may retain or remove the director. If the Governor removes the director his or her action shall be final. He or she shall receive an annual salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code, and shall devote his or her entire time to the duties of his or her office.

SEC. 147. Section 5058 of the Penal Code is amended to read:

5058. (a) The director may prescribe and amend rules and regulations for the administration of the prisons. The rules and regulations shall be promulgated and filed pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall, to the extent practical, be stated in language that is easily understood by the general public.

(b) The director shall maintain, publish and make available to the general public, a compendium of the rules and regulations promulgated by the director pursuant to this section.

(c) The following exceptions to the procedures specified in this section shall apply to the Department of Corrections:

(1) The director may specify an effective date that is any time more than 30 days after the rule or regulation is filed with the Secretary of State; provided that no less than 20 days prior to that effective date, copies of the rule or regulation shall be posted in conspicuous places throughout each institution and shall be mailed to all persons or organizations who request them.

(2) The director may rely upon a summary of the information compiled by a hearing officer if the summary and the testimony taken regarding the proposed action shall be retained as part of the public record for at least one year after the adoption, amendment, or repeal.

SEC. 148. Section 5059 of the Penal Code is amended to read:

5059. This title shall not affect the powers or jurisdiction of the Department of Transportation as to road camps pursuant to Article 4 (commencing with Section 2760) of Chapter 5 of Title 1 of Part 3.

SEC. 149. Section 5061 of the Penal Code is amended to read:

5061. Whenever any person confined in any state institution subject to the jurisdiction of the Director of Corrections dies, and any personal funds or property of that person remains in the hands of the Director of Corrections, the funds may be applied in an amount not exceeding three hundred dollars ($300) to the payment of his or her burial expenses and charges related thereto. If no demand is made upon the director by the owner of the funds or property or his or her legally appointed representative, the director shall hold and dispose of those funds or property as follows:

If the decedent leaves a will, the director shall, within 30 days after the date of death of the decedent, deliver the will to the clerk of the superior court having jurisdiction of the estate. If an executor is

named in the will, the director shall furnish him or her written notice of the delivery of the will as herein provided.

All money or other personal property of the decedent remaining in the custody or possession of the director shall be held by him or her for a period of one year from the date of death of the decedent, for the benefit of the heirs, legatees or successors in interest of that decedent.

Upon the expiration of the one-year period, any money remaining unclaimed in the custody or possession of the director shall be delivered by him or her to the Treasurer for deposit in the Unclaimed Property Fund under Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

Upon the expiration of the one-year period, all personal property and documents of the decedent, other than cash, remaining unclaimed in the custody or possession of the director, shall be disposed of as follows:

(a) All deeds, contracts or assignments shall be filed by the director with the public administrator of the county of commitment of the decedent.

(b) All other personal property shall be sold by the director at public auction, or upon a sealed-bid basis, and the proceeds of the sale delivered by him or her to the Treasurer in the same manner as is herein provided with respect to unclaimed money of the decedent. If he or she deems it expedient to do so, the director may accumulate the property of several decedents and sell the property in such lots as he or she may determine, provided that he or she makes a determination as to each decedent's share of the proceeds.

(c) If any personal property of the decedent is not salable at public auction, or upon a sealed-bid basis, or if it has no intrinsic value, or if its value is not sufficient to justify the deposit of such property in the State Treasury, the director may order it destroyed.

(d) All other unclaimed personal property of the decedent not disposed of as provided in paragraphs (a), (b), or (c) hereof, shall be delivered by the director to the Controller for deposit in the State Treasury under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

SEC. 150. Section 5062 of the Penal Code is amended to read:

5062. Whenever any person confined in any state institution subject to the jurisdiction of the Director of Corrections escapes, or is discharged or paroled from such institution, and any personal funds or property of that person remains in the hands of the Director of Corrections, and no demand is made upon the director by the owner of the funds or property or his or her legally appointed representative, all money and other intangible personal property of the person, other than deeds, contracts, or assignments, remaining in the custody or possession of the director shall be held by him or her for a period of seven years from the date of that escape, discharge,

or parole, for the benefit of that person or his or her successors in interest.

Upon the expiration of the seven-year period, any money and other intangible personal property, other than deeds, contracts, or assignments, remaining unclaimed in the custody or possession of the director shall be subject to Article 1 (commencing with Section 1500) of Chapter 7 of Title 10 of Part 3 of the Code of Civil Procedure.

Upon the expiration of one year from the date of that escape, discharge, or parole:

(a) All deeds, contracts, or assignments shall be filed by the director with the public administrator of the county of commitment of that person.

(b) All tangible personal property other than money, remaining unclaimed in his or her custody or possession, shall be sold by the director at public auction, or upon a sealed-bid basis, and the proceeds of the sale shall be held by him or her subject to Section 5008 and subject to Article 1 (commencing with Section 1500) of Chapter 7 of Title 10 of Part 3 of the Code of Civil Procedure. If he or she deems it expedient to do so, the director may accumulate the property of several inmates and may sell the property in such lots as he or she may determine, provided that he or she makes a determination as to each inmate's share of the proceeds.

If any tangible personal property covered by this section is not salable at public auction or upon a sealed-bid basis, or if it has no intrinsic value, or if its value is not sufficient to justify its retention by the director to be offered for sale at public auction or upon a sealed-bid basis at a later date, the director may order it destroyed.

SEC. 151. Section 5064 of the Penal Code is amended to read:

5064. At the time of delivering any money or other personal property to the Treasurer or Controller under Section 5061 or of Article 1 (commencing with Section 1500) of Chapter 7 of Title 10 of Part 3 of the Code of Civil Procedure, the director shall deliver to the Controller a schedule setting forth a statement and description of all money and other personal property delivered, and the name and last known address of the owner or deceased owner.

SEC. 152. Section 5066 of the Penal Code is repealed.

SEC. 153. Section 5068.5 of the Penal Code is amended to read:

5068.5. (a) Notwithstanding any other provision of law, except as provided in subdivision (b), any person employed or under contract to provide diagnostic, treatment, or other mental health services in the state correctional system shall be a physician and surgeon, a psychologist, or other health professional, licensed to practice in this state.

(b) Notwithstanding Section 5068 or Section 704 of the Welfare and Institutions Code, persons employed on January 1, 1985, as psychologists to provide diagnostic or treatment services, including those persons on authorized leave, but not including intermittent personnel, shall be exempt from the requirements of subdivision (a), so long as they continue in employment in the same class and in the

same department. Additionally, the requirements of subdivision (a) may be waived in order for a person to gain qualifying experience for licensure as a psychologist in this state. However, such a waiver shall not exceed two years from the date of the commencement of employment. The requirements of subdivision (a) may be waived for a person recruited for employment from outside this state and who possesses experience sufficient to qualify for admission to a licensing examination on the date of his or her employment for a period of one year from the date of his or her employment.

SEC. 154. Section 5076.2 of the Penal Code is amended to read:

5076.2. (a) Any rules and regulations, including any resolutions and policy statements, promulgated by the Board of Prison Terms, shall be promulgated and filed pursuant to Chapter 3.5 (commencing with Section 11340) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, and shall, to the extent practical, be stated in language that is easily understood by the general public.

(b) The Board of Prison Terms shall maintain, publish and make available to the general public, a compendium of its rules and regulations, including any resolutions and policy statements, promulgated pursuant to this section.

(c) The following exception to the procedures specified in this section shall apply to the Board of Prison Terms: the chairman may specify an effective date that is any time more than 30 days after the rule or regulation is filed with the Secretary of State; provided that no less than 20 days prior to such effective date, copies of the rule or regulation shall be posted in conspicuous places throughout each institution and shall be mailed to all persons or organizations who request them.

SEC. 155. Section 5082 of the Penal Code is amended to read:

5082. (a) Any number of employees of the Board of Prison Terms as are needed to carry out its functions shall be selected and appointed pursuant to the State Civil Service Act. Nothing shall prohibit the Board of Prison Terms from employing any person employed formerly by the Adult Authority or Women's Board of Terms and Paroles.

(b) The provisions of Chapter 6 (commencing with Section 6050) of Title 7 of Part 3, relating to the employment of personnel by the department, do not apply to the employees of the Board of Prison Terms.

SEC. 156. Section 6001 of the Penal Code is amended to read:

6001. The establishment, organization, jurisdiction, powers, duties, responsibilities, and functions of the Youth Authority are continued as provided in the Youth Authority Act (Chapter 1 (commencing with Section 1700) of Division 2.5 of the Welfare and Institutions Code).

SEC. 157. Section 6003 of the Penal Code is amended to read:

6003. The Youth Authority and the Director of Corrections may, pursuant to Section 11253 and Sections 11256 to 11259, inclusive, of

the Government Code, provide for the performance of any of the duties or the exercise of any of the powers of the Youth Authority by the Department of Corrections, subject to the direction and control of the Youth Authority, except that the power of classification and segregation of persons committed to the authority shall be exercised by the authority, and shall not be exercised by any other agency.

SEC. 158. Section 6004 of the Penal Code is amended to read:

6004. Whenever the Director of Corrections or the Department of Corrections exercises any power or performs any duty of the Youth Authority pursuant to the authorization in Section 6003:

(a) The exercise of the power or the performance of the duty by the Director of Corrections or the Department of Corrections shall constitute an exercise of the power or a performance of the duty by the Youth Authority for the purposes of the Youth Authority Act (Chapter 1 (commencing with Section 1700) of Division 2.5 of the Welfare and Institutions Code).

(b) The operation of any service, place, institution, hospital, agency, or facility by the Department of Corrections under the authorization in Section 6003 shall be deemed operation by the Youth Authority.

(c) All public officers and other persons under a duty to make any reports or provide any information, access, or assistance to the Youth Authority in respect to the power or duty so exercised shall make the reports, or provide the information, access, or assistance to the Director of Corrections or the Department of Corrections.

SEC. 159. Section 6029 of the Penal Code is amended to read:

6029. The plans and specifications of every jail, prison, or other place of detention of persons charged with or convicted of crime or of persons detained pursuant to the Juvenile Court Law (Chapter 2 (commencing with Section 200) of Division 2 of the Welfare and Institutions Code) or the Youth Authority Act (Chapter 1 (commencing with Section 1700) of Division 2.5 of the Welfare and Institutions Code), if such plans and specifications involve construction, reconstruction, remodeling, or repairs of an aggregate cost in excess of fifteen thousand dollars ($15,000), shall be submitted to the board for its recommendations. Upon request of any city, city and county, or county, the board shall consider the entire program or group of detention facilities currently planned or under consideration by the city, city and county, or county, and make a study of the entire needs of the city, city and county, or county therefor, and make recommendations thereon. No state department or agency other than the board shall have authority to make recommendations in respect to plans and specifications for the construction of county jails or other county detention facilities or for alterations thereto, except such recommendations as the board may request from any such state department or agency.

SEC. 160. Section 6035 of the Penal Code is amended to read:

6035. (a) For the purpose of raising the level of competence of local corrections and probation officers, the board shall adopt, and

may from time to time amend, rules establishing minimum standards for the selection and training for such officers employed by any city, county, or city and county. All such rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Any city, county, or city and county receiving state aid pursuant to Article 3 (commencing with Section 6040) shall adhere to the standards for selection and training established by the board. The board may defer the promulgation of selection standards until necessary research for job relatedness is completed. In such case, and until selection standards are adopted, a city, county, or city and county may receive state aid upon certification of willingness to adhere to the training standards pursuant to Section 6041.

(c) Minimum training standards may include, but are not limited to, basic, entry, continuation, supervisory, management, and specialized assignments.

(d) Training standards shall apply to all local corrections and probation officers employed by jurisdictions receiving funds under Article 3 (commencing with Section 6040). Exemptions from this requirement for personnel hired prior to July 1, 1980, shall be determined by the board. For the purpose of such exemptions, the board may develop written or oral equivalency examinations, a certification process which recognizes standards equivalency through a combination of professional experience and training, or a combination of examination and certification.

SEC. 161. Section 6052 of the Penal Code is repealed.

SEC. 162. Section 6054 of the Penal Code is amended to read:

6054. The director may purchase annuity contracts for permanent employees of the department if all of the following conditions are met:

(a) The annuity contract is under an annuity plan which meets the requirements of subdivision (b) of Section 403 of the Internal Revenue Code of 1954 of the United States.

(b) The purchase of the annuities meets the requirements of the Insurance Code and the Government Code applicable to the purchase.

(c) The salary of an employee for whom the contract is purchased is reduced by the amount of the cost of the contract.

(d) The employee makes an application to the director for the purchase and reduction of salary.

SEC. 163. Section 6082 of the Penal Code is amended to read:

6082. References in this title and in Title 5 (commencing with Section 4500) to prisons refer to all facilities, camps, hospitals and institutions for the confinement, treatment, employment, training and discipline of persons in the legal custody of the Department of Corrections.

SEC. 164. Section 6106 of the Penal Code is amended to read:

6106. The supervision, management, and control of the Medical Facility and the responsibility for the care, custody, treatment,

training, discipline and employment of persons confined therein are vested in the Director of Corrections. The provisions of Part 3 (commencing with Section 2000) apply to the institution as a prison under the jurisdiction of the Department of Corrections and to the persons confined therein insofar as those provisions may be applicable.

SEC. 165. Section 6207 of the Penal Code is amended to read:

6207. The provisions of Part 3 (commencing with Section 2000), insofar as applicable, apply to the conservation centers and branches thereof and any permanent, temporary, and mobile camps operating therefrom and to the persons confined therein.

SEC. 166. Section 6301 of the Penal Code is amended to read:

6301. The primary purpose of the camps shall be the confinement, treatment, and care of persons sentenced to long jail terms, including persons so imprisoned as a condition of probation.

SEC. 167. Section 10000 of the Penal Code is amended to read:

10000. The provisions of Part 3 (commencing with Section 2000), insofar as they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

SEC. 168. Section 10003 of the Penal Code is amended to read:

10003. If any portion of Part 3 (commencing with Section 2000) is held unconstitutional, that decision shall not affect the validity of any other portion of Part 3 (commencing with Section 2000).

SEC. 169. 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 those persons he or she 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 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.

(c) The name of a minor found to have committed one of the offenses listed in subdivision (a) shall not be confidential, unless the court, for good cause, so orders.

SEC. 170. Any section of any act enacted by the Legislature during the 1987 calendar year, which takes effect on or before January 1, 1988, and which amends or amends and renumbers any section of the codes, as proposed to be amended by this act, other than the amendments to Sections 241, 1203, and 1203.055 of the Penal Code proposed by this act, shall prevail over this act, whether that act is enacted prior to or subsequent to this act.

CHAPTER 829

An act to amend and renumber the heading of Chapter 14 (commencing with Section 67320) of, and to add Chapter 14.2 (commencing with Section 67310) to, Part 40 of the Education Code, relating to postsecondary education.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Chapter 14.2 (commencing with Section 67310) is added to Part 40 of the Education Code, to read:

CHAPTER 14.2. STATE FUNDED DISABLED STUDENT PROGRAMS AND SERVICES

67310. (a) The Legislature finds and declares that equal access to public postsecondary education is essential for the full integration of persons with disabilities into the social, political, and economic mainstream of California. The Legislature recognizes the historic underrepresentation of disabled students in postsecondary programs and the need for equitable efforts that enhance the enrollment and retention of disabled students in public colleges and universities in California.

(b) The Legislature recognizes its responsibility to provide and adequately fund postsecondary programs and services for disabled students attending a public postsecondary institution.

(c) To meet this responsibility, the Legislature sets forth the following principles for public postsecondary institutions and budgetary control agencies to observe in providing postsecondary programs and services for students with disabilities:

(1) The state funded activity shall be consistent with the stated purpose of programs and services for disabled students provided by the California Community Colleges, the California State University, or the University of California, as governed by the statutes, regulations, and guidelines of the community colleges, state university, or the University of California.

(2) The state funded activity shall not duplicate services or instruction that are available to all students, either on campus or in the community.

(3) The state funded activity shall be directly related to the functional limitations of the verifiable disabilities of the students to be served.

(4) The state funded activity shall be directly related to these students' full access to and participation in the educational process.

(5) The state funded activity shall have as its goals the independence of disabled students and the maximum integration of

these students with other students.

(6) The state funded activity shall be provided in the most integrated setting possible, consistent with state and federal law, state policy and funding requirements, and missions and policies of the postsecondary segment, and shall be based on identified student needs.

(d) It is the intent of the Legislature that, through the state budget process, the public postsecondary institutions request, and the state provide, funds to cover the actual cost of providing services and instruction, consistent with the principles set forth in subdivision (c), to disabled students in their respective postsecondary institutions.

(e) All public postsecondary education institutions shall continue to utilize other available resources to support programs and services for disabled students as well as maintain their current level of funding from other sources whenever possible.

(f) Pursuant to Section 67312, postsecondary institutions shall demonstrate institutional accountability and clear program effectiveness evaluations for services to students with disabilities.

67311. It is the desire and intent of the Legislature that, as appropriate for each postsecondary segment, funds for disabled student programs and services be based on the following three categories of costs:

(a) Fixed costs associated with the ongoing administration and operation of the services and programs. These fixed costs are basic ongoing administrative and operational costs of campus programs that are relatively consistent in frequency from year-to-year, such as:

(1) Access to, and arrangements for, adaptive educational equipment, materials, and supplies required by disabled students.

(2) Job placement and development services related to the transition from school to employment.

(3) Liaisons with campus and community agencies, including referral and followup services to these agencies on behalf of disabled students.

(4) On-campus and off-campus registration assistance, including priority enrollment, applications for financial aid, and related college services.

(5) Special parking, including on-campus parking registration, temporary parking permit arrangments, and application assistance for students who do not have state handicapped placards or license plates.

(6) Supplemental specialized orientation to acquaint students with the campus environment.

(7) Activities to coordinate and administer specialized services and instruction.

(8) Activities to assess the planning, implementation, and effectiveness of disabled student services and programs.

The baseline cost of these services shall be determined by the respective system and fully funded with annual adjustments for

inflation and salary range changes, to the extent funds are provided.

(b) Continuing variable costs that fluctuate with changes in the number of students or the unit load of students. These continuing variable costs are costs for services that vary in frequency depending on the needs of students, such as:

(1) Diagnostic assessment, including both individual and group assessment not otherwise provided by the institution to determine functional, educational, or employment levels or to certify specific disabilities.

(2) On-campus mobility assistance, including mobility training and orientation and manual or automatic transportation assistance to and from college courses and related educational activities.

(3) Off-campus transportation assistance, including transporting students with disabilities to and from the campus in areas where accessible public transportation is unavailable, inadequate, or both.

(4) Disability-related counseling and advising, including specialized academic, vocational, personal, and peer counseling, that is developed specifically for disabled students and not duplicated by regular counseling and advising services available to all students.

(5) Interpreter services, including manual and oral interpreting for deaf and hard-of-hearing students.

(6) Reader services to coordinate and provide access to information required for equitable academic participation if this access is unavailable in other suitable modes.

(7) Services to facilitate the repair of equipment and learning assistance devices.

(8) Special class instruction that does not duplicate existing college courses but is necessary to meet the unique educational needs of particular groups of disabled students.

(9) Speech services, provided by licensed speech or language pathologists for students with verified speech disabilities.

(10) Test taking facilitation, including adapting tests for and proctoring test taking by, disabled students.

(11) Transcription services, including, but not limited to, the provision of Braille and print materials.

(12) Specialized tutoring services not otherwise provided by the institution.

(13) Notetaker services for writing, notetaking, and manual manipulation for classroom and related academic activities.

State funds may be provided annually for the cost of these services on an actual-cost basis, including wages for the individuals providing these services and expenses for attendant supplies. Each institution shall be responsible for documenting its costs to the appropriate state agencies.

(c) One-time variable costs associated with the purchase or replacement of equipment. One-time variable costs are one-time expenditures for the purchase of supplies or the repair of equipment, such as adapted educational materials and vehicles. State funds shall be provided for these expenses on an actual cost basis as documented

by each institution.

67312. (a) The Board of Governors of the California Community Colleges and the Trustees of the California State University shall, for their respective systems, and the Regents of the University of California may do the following:

(1) Work with the California Postsecondary Education Commission and the Department of Finance to develop formulas or procedures for allocating funds authorized under this chapter.

(2) Adopt rules and regulations necessary to the operation of programs funded pursuant to this chapter.

(3) Maintain the present intersegmental efforts to work with the California Postsecondary Education Commission and other interested parties, to coordinate the planning and development of programs for students with disabilities, including, but not limited to, the establishment of common definitions for students with disabilities and uniform formats for reports required under this chapter.

(4) Develop and implement, in consultation with students and staff, a system for evaluating state-funded programs and services for disabled students on each campus at least every five years. At a minimum, these systems shall provide for the gathering of outcome data, staff and student perceptions of program effectiveness, and data on the implementation of the program and physical accessibility requirements of Section 794 of Title 29 of the Federal Rehabilitation Act of 1973.

(b) Commencing in January 1990, and every two years thereafter, the Board of Governors of the California Community Colleges and the Trustees of the California State University shall, for their respective systems, and the Regents of the University of California may, submit a report to the Governor, the education policy committees of the Legislature, and the California Postsecondary Education Commission on the evaluations developed pursuant to subdivision (a). These biennial reports shall also include a review on a campus-by-campus basis of the enrollment, retention, transition, and graduation rates of disabled students.

(c) The California Postsecondary Education Commission shall review these reports and submit its comments and recommendations to the Governor and education policy committees of the Legislature.

67313. Nothing in this chapter shall be construed to be directing any student, or students, toward a particular program or service for students with disabilities nor shall anything in this chapter be used to deny any student an education because he or she does not wish to receive state funded disabled student programs and services.

67314. No provision of this chapter shall apply to the University of California unless the Regents of the University of California, by resolution, make that provision applicable.

SEC. 2. The heading of Chapter 14 (commencing with Section 67320) of Part 40 of the Education Code is amended and renumbered to read:

CHAPTER 14.3. OFFICE EQUIPMENT

CHAPTER 830

An act to amend Section 798.74 of the Civil Code, and to amend Sections 18062.2 and 18063 of the Health and Safety Code, relating to mobilehomes.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 798.74 of the Civil Code is amended to read:

798.74. (a) 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 the rejection. If the approval of a purchaser is withheld for any reason other than those stated in this article, the management or owner may be held liable for all damages proximately resulting therefrom.

(b) If the management collects a fee or charge from a prospective purchaser of a mobilehome in order to obtain a financial report or credit rating, the full amount of the fee or charge shall be credited toward payment of the first month's rent for that mobilehome purchaser. If, for whatever reason, the prospective purchaser is rejected by the management, the management shall refund to the prospective purchaser the full amount of that fee or charge within 30 days from the date of rejection. If the prospective purchaser is approved by the management, but, for whatever reason, the prospective purchaser elects not to purchase the mobilehome, the management may retain the fee, or a portion thereof, to defray its administrative costs under this section.

SEC. 2. Section 18062.2 of the Health and Safety Code is amended to read:

18062.2. It is also unlawful for a dealer to do any of the following:

(a) Engage in the business for which the dealer is licensed without at all times maintaining an established place of business.

(b) Employ any person as a salesperson who is not licensed pursuant to this part, or whose license is not displayed on the

premises of the dealer as provided in Section 18063.

(c) Permit the use of his or her dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of manufactured homes, mobilehomes, or commercial coaches, or to permit the use of the dealer's license, supplies, or books to operate a branch or secondary location to be used by any other person, if, in either situation, the licensee has no financial or equitable interest or investment in the manufactured homes, mobilehomes, or commercial coaches sold by, or the business of, or branch or secondary location used by, the person, or has no such interest or investment other than commissions, compensations, fees, or any other thing of value received for the use of the dealer's license, supplies, or books to engage in the sale of manufactured homes, mobilehomes, or commercial coaches.

(d) Advertise any specific manufactured home, mobilehome, or commercial coach for sale without identifying the manufactured home, mobilehome, or commercial coach by its serial number.

(e) Advertise the total price of a manufactured home, mobilehome, or commercial coach without including all costs to the purchaser at time of delivery at the dealer's premises, except sales tax, title and registration fees, finance charges, and any dealer documentary preparation charge. The dealer documentary preparation charge shall not exceed twenty dollars ($20).

(f) Exclude from the advertisement of a manufactured home, mobilehome, or commercial coach for sale information to the effect that there will be added to the advertised total price at the time of sale, charges for sales tax, title and registration fees, escrow fees, and any dealer documentary preparation charge.

(g) Represent the dealer documentary preparation charge as a governmental fee.

(h) Refuse to sell the manufactured home, mobilehome, or commercial coach to any person at the advertised total price for that manufactured home, mobilehome, or commercial coach, exclusive of sales tax, title fee, finance charges, and dealer documentary preparation charge, which charge shall not exceed twenty dollars ($20), while it remains unsold, unless the advertisement states the advertised total price is good only for a specified time and that time has elapsed.

(i) Not post the salesperson's license in a place conspicuous to the public on the premises where they are actually engaged in the selling of manufactured homes, mobilehomes, and commercial coaches for the employing dealer. The license shall be displayed continuously during their employment. If a salesperson's employment is terminated, the dealer shall return the license to the salesperson.

(j) Offer for sale, rent, or lease within this state a new manufactured home, mobilehome, or commercial coach whose manufacturer is not licensed under this part.

(k) To violate Section 798.71 or 798.74 of the Civil Code, or both.

SEC. 3. Section 18063 of the Health and Safety Code is amended

to read:

18063. It is unlawful for a salesperson to do any of the following:

(a) At the time of employment, not deliver to his or her employing dealer his or her salesperson's license.

(b) Fail to report in writing to the department every change of residence within five days of the change.

(c) Act or attempt to act as a salesperson while not employed by a dealer. For purposes of this subdivision, "employment by a dealer" means employment reported to the department pursuant to subdivision (d) of Section 18060.

(d) To violate Section 798.71 or 798.74 of the Civil Code, or both.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 831

An act to amend Sections 7090.1 and 7102 of the Business and Professions Code, relating to contractors.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 7090.1 of the Business and Professions Code is amended to read:

7090.1. Notwithstanding any other provisions of law, the failure to pay a civil penalty, or to comply with an order of correction or an order to pay a specified sum to an injured party in lieu of correction once the order has become final, shall result in the automatic suspension of a license by operation of law 30 days after noncompliance with the terms of the order. The registrar shall notify the licensee in writing of the failure to comply with the final order and that the license shall be suspended 30 days from the date of the notice. The licensee may contest the determination of noncompliance within 15 days after service of the notice, by written notice to the registrar. Upon receipt of the written notice, the registrar may reconsider the determination or proceed with an accusation for violation of Section 7099.6. Reinstatement may be made at any time following the suspension by complying with the final order of the citation. If no reinstatement of the license is made within one year of the date of the automatic suspension, the license shall be automatically revoked by operation of law for a period to be determined by the registrar pursuant to Section 7102.

SEC. 2. Section 7102 of the Business and Professions Code is amended to read:

7102. After suspension of the license upon any of the grounds set forth in this article, the registrar may reinstate the license upon proof of compliance by the contractor with all provisions of the decision as to reinstatement or, in the absence of such decision or any provisions therein as to reinstatement, in the sound discretion of the registrar.

After revocation of a license upon any of the grounds set forth in this article, the license shall not be reinstated or reissued and a license shall not be issued to any member of the personnel of the revoked licensee found to have had knowledge of or participated in the acts or omissions constituting grounds for revocation, within a minimum period of one year and a maximum period of five years after the final decision of revocation and then only on proper showing that all loss caused by the act or omission for which the license was revoked has been fully satisfied and that all conditions imposed by the decision of revocation have been complied with.

The board shall promulgate regulations covering the criteria to be considered when extending the minimum one-year period. The criteria shall give due consideration to the appropriateness of the extension of time with respect to the following factors:

(a) The gravity of the violation.

(b) The history of previous violations.

(c) Criminal convictions.

When any loss has been reduced to a monetary obligation or debt, however, the satisfaction of such monetary obligation or debt as a prerequisite for the issuance, reissuance, or reinstatement of a license shall not be required where such monetary obligation or debt has been adjudicated in a bankruptcy proceeding. However, any nonmonetary condition not adjudicated in a bankruptcy proceeding shall be complied with prior to the issuance, the reissuance, or reinstatement of the license.

CHAPTER 832

An act to amend Section 44314 of the Education Code, relating to education.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. The Legislature hereby finds and declares that the breadth and depth of the academic preparation of candidates for multiple subject instruction in elementary schools is the primary basis for the quality of the elementary school curriculum for young children. The Legislature recognizes that most young children learn

the subjects of the school curriculum for the first time in elementary schools and classrooms. These early encounters shape each child's subsequent academic successes and failures. Communication skills, reasoning abilities, physical capacities, and personal values also develop as a consequence of early instruction in language arts, mathematics, science, social studies, art, music, health, and physical education.

The Legislature also recognizes that three out of four of the elementary teachers who are prepared in California qualify for their credentials by completing programs of subject matter preparation, which constitute two-thirds of the collegiate education of these candidates.

SEC. 2. Section 44314 of the Education Code is amended to read:

44314. A "diversified" or "liberal arts" program is any program that has been approved by the commission on the basis of standards adopted by the commission.

(a) An approved program shall consist of a minimum of 84 semester units, or equivalent quarter units, including, but not limited to, language studies, literature, mathematics, science, social science, history, humanities, the arts, physical education and human development.

(b) The commission shall establish standards for "diversified" or "liberal arts" programs, or equivalent programs that waive the subject matter examination for multiple subjects instruction.

SEC. 3. The commission shall adopt standards and promulgate regulations to implement this act on or before July 1, 1988, after which the commission shall begin to review and approve "diversified" or "liberal arts" programs on the basis of the standards and regulations. If the commission finds that the criteria and procedures utilized by a nongovernmental accreditation agency represent a higher standard for "diversified" or "liberal arts" programs than the commission's criteria and procedures for program approval, the commission may approve programs that have been accredited by the nongovernmental agency without separately reviewing the accredited programs.

SEC. 4. Section 2 of this bill amends Section 44314 of the Education Code. Senate Bill No. 1677 and Assembly Bill No. 2619 also propose to amend Section 44314 of the Education Code. If either Senate Bill No. 1677 or Assembly Bill No. 2619, or both, are enacted during the 1987 calendar year, and take effect on or before January 1, 1988, and amend Section 44314 of the Education Code, then Section 2 of this bill shall not become operative regardless of the order of chaptering.

CHAPTER 833

An act to amend Sections 1063.1 and 1063.2 of the Insurance Code, relating to insurance.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 1063.1 of the Insurance Code is amended to read:

1063.1. As used in this article:

(a) "Member insurer" means an insurer required to be a member of the association in accordance with the provisions of subdivision (a) of Section 1063, except and to the extent that the insurer is participating in an insolvency program adopted by the United States government.

(b) "Insolvent insurer" means a member insurer for which a domiciliary or ancillary liquidator has been appointed in this state after the effective date of this article.

(c) (1) "Covered claims" means the obligations of an insolvent insurer, including the obligation for unearned premiums, (i) imposed by law and within the coverage of an insurance policy of the insolvent insurer; (ii) which were unpaid by the insolvent insurer; (iii) which are presented as a claim to the liquidator in this state or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings; (iv) which were incurred prior to, on, or within 30 days after the date the liquidator was appointed; (v) for which the assets of the insolvent insurer are insufficient to discharge in full; (vi) in the case of a policy of workers' compensation insurance, to provide workers' compensation benefits under the workers' compensation law of this state; and (vii) in the case of other classes of insurance if the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state.

(2) "Covered claims" shall not include any obligations arising from the following:

(i) Life, annuity, health, or disability insurance.

(ii) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks.

(iii) Fidelity or surety insurance including fidelity or surety bonds, or any other bonding obligations.

(iv) Credit insurance.

(v) Title insurance.

(vi) Ocean marine insurance or ocean marine coverage under any insurance policy including claims arising from the following: the Jones Act (46 U.S.C.A. Sec. 688), the Longshore and Harbor Workers'

Compensation Act (33 U.S.C.A. Sec. 901 et seq.), or any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage.

(vii) Any claim servicing agreement or insurance policy which contains a retrospective rating or other premium adjustment agreement under which premiums are substantially equal to the losses and the loss expenses covered under the policy or any policy providing retroactive insurance of known loss.

(3) "Covered claims" shall not include any obligations of the insolvent insurer arising out of any reinsurance contracts, nor any obligations incurred after the expiration date of the insurance policy or after the insurance policy has been replaced by the insured or canceled at the insured's request or after the insurance policy has been canceled by the association as provided in this chapter, nor any obligations to any state or to the federal government.

(4) "Covered claims" shall not include any obligations to insurers, insurance pools, or underwriting associations, nor their claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter.

(5) "Covered claims," except in the case of a claim for workers' compensation benefits, shall not include any claim in an amount of one hundred dollars ($100) or less, nor the first one hundred dollars ($100) of any claim in excess of one hundred dollars ($100), nor that portion of any claim which is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer.

(6) "Covered claims" shall not include that portion of any claim, other than a claim for workers' compensation benefits, which is in excess of five hundred thousand dollars ($500,000).

(7) "Covered claims" shall not include any amount sought as a return of a premium under any retrospective rating plan.

(8) "Covered claims" shall not include any amount awarded as punitive or exemplary damages.

(9) "Covered claims" shall not include (i) any claim to the extent it is covered by any other insurance of a class covered by the provisions of this article available to the claimant or insured nor (ii) any claim by any person other than the original claimant under the insurance policy in his or her own name, his or her executor, administrator, guardian or other personal representative or trustee in bankruptcy and shall not include any claim asserted by an assignee or one claiming by right of subrogation, except as otherwise provided in this chapter.

(10) "Covered claims" shall not include any obligations arising out of the issuance of an insurance policy written by the separate division of the State Compensation Insurance Fund pursuant to the provisions of Sections 11802 and 11803.

(11) "Covered claims" shall not include any obligations of the insolvent insurer arising from any policy or contract of insurance issued or renewed prior to the insolvent insurer's admission to transact insurance in the State of California.

(12) "Covered claims" shall not include surplus deposits of subscribers as defined in Section 1374.1.

(d) "Admitted to transact insurance in this state" means an insurer possessing a valid certificate of authority issued by the California Department of Insurance.

(e) "Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(f) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not in fact exist.

(g) "Claimant" means any insured making a first party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.

SEC. 2. Section 1063.2 of the Insurance Code is amended to read:

1063.2. (a) The association shall pay and discharge covered claims and in connection therewith pay for or furnish loss adjustment services and defenses of claimants when required by policy provisions. It may do so either directly by itself or through a servicing facility or through a contract for reinsurance and assumption of liabilities by one or more member insurers or through a contract with the liquidator, upon terms satisfactory to the association and to the liquidator, under which payments on covered claims would be made by the liquidator using funds provided by the association.

(b) The association shall be a party in interest in all proceedings involving a covered claim, and shall have the same rights as the insolvent insurer would have had if not in liquidation, including, but not limited to, the right to: (1) appear, defend, and appeal a claim in a court of competent jurisdiction; (2) receive notice of, investigate, adjust, compromise, settle, and pay a covered claim; and (3) investigate, handle, and deny a noncovered claim. The association shall have no cause of action against the insureds of the insolvent insurer for any sums it has paid out, except as provided by this article.

(c) (1) If damages against uninsured motorists are recoverable by the claimant from his or her own insurer, the applicable limits of the uninsured motorists coverage shall be a credit against a covered claim payable under this article. Any person having a claim which may be recovered under more than one insurance guaranty

association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first party claim for damage to property with a permanent location, he or she shall seek recovery first from the association of the location of the property, and if it is a workers' compensation claim, he or she shall seek recovery first from the association of the residence of the claimant. Any recovery under this article shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent. A member insurer may recover in subrogation from the association only one-half of any amount paid by such insurer under uninsured motorist coverage for bodily injury or wrongful death (and nothing for a payment for anything else), in those cases where the injured person insured by such an insurer has proceeded under his or her uninsured motorist coverage on the ground that the tortfeasor is uninsured as a result of the insolvency of his or her liability insurer (an insolvent insurer as defined in this article), provided that such member insurer shall waive all rights of subrogation against such tortfeasor. Any amount paid a claimant in excess of the amount authorized by this section may be recovered by action brought by the association.

(2) Any claimant having collision coverage on a loss which is covered by the insolvent company's liability policy shall first proceed against his or her collision carrier. Neither that claimant nor the collision carrier, if it is a member of the association, shall have the right to sue or continue a suit against the insured of the insolvent insurance company for such collision damage.

(d) The association shall have the right to recover from any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this article the amount of any covered claim and allocated claims expense paid on behalf of that person pursuant to this article.

(e) Any person having a claim or legal right of recovery under any governmental insurance or guaranty program which is also a covered claim, shall be required to first exhaust his or her right under the program. Any amount payable on a covered claim shall be reduced by the amount of any recovery under the program.

(f) The association shall continue coverage for covered claims under all insurance policies of the insolvent insurer that were in force on the date the liquidator was appointed until the insurance policy has expired in accordance with its terms, or has been replaced by the insured, or canceled at the insured's request, or has been canceled by the association as provided in this article.

(g) The association shall have authority to cancel insurance policies of the insolvent insurer by mailing or delivering to the insured at the last known address within this state a written notice of cancellation at least 10 days prior to the effective date of such cancellation, notwithstanding any statute or policy provision to the contrary.

(h) "Covered claims" shall not include any judgments against or obligations or liabilities of the insolvent insurer or the commissioner, as liquidator, or otherwise resulting from alleged or proven torts, nor shall any default judgment or stipulated judgment against the insolvent insurer, or against the insured of the insolvent insurer, be binding against the association.

(i) "Covered claims" shall not include any loss adjustment expenses, including adjustment fees and expenses, attorney fees and expenses, court costs, interest, and bond premiums, incurred prior to the appointment of a liquidator. The deductible provided for in paragraph (5) of subdivision (c) of Section 1063.1 shall apply to each person for each accident for which he or she makes a claim.

SEC. 3. The amendments to Sections 1063.1 and 1063.2 of the Insurance Code made by this act apply to claims resulting from insured occurrences that occur on or after January 1, 1988.

CHAPTER 834

An act to add Section 20145 to the Government Code, relating to public employees, and making an appropriation therefor.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 20145 is added to the Government Code, to read:

20145. (a) The Legislature finds that, given the very real possibility that social security will be mandated upon state correctional peace officers, the cost of providing the present state peace officer/firefighter retirement formula in addition to the social security coverage would create an excessive contribution burden upon the employee.

(b) The Legislature also finds that it is in the best interest of the state to investigate a new state peace officer/firefighter formula that would be available to those officers who are mandated into social security.

(c) Therefore, the board shall investigate the feasibility of establishing a voluntary plan which will provide an alternative to remaining in the current state peace officer/firefighter formula and paying full social security.

As part of the feasibility study for the new voluntary peace officer/firefighter plan, the board shall consider program options including, but not limited to, the following:

(1) Optional enrollment for both current and future hires.

(2) A no-cost-to-employees feature.

(3) Maintenance of the approximate current employer rate.

(4) Maintenance of the approximate current retirement allowance (including receivable social security benefits).

(5) Provision for the employer to pay all or part of the employee's social security contributions.

(6) Continuance of the current program for those who opt to participate both in it and in social security. The new peace officer/firefighters program options identified in this study shall not be made available unless approved in subsequent legislation and included in an approved memorandum of understanding.

(d) The board shall report its methodology and findings to the appropriate policy committees of each house and to the Joint Legislative Budget Committee no later than December 1, 1988. The report shall include the following information about the alternative studies:

(1) The benefits to be provided by social security.

(2) The total costs for the social security contribution.

(3) The savings from reduced benefit payments from the Public Employees' Retirement System.

(4) The net costs to the state (social security payments less reduced contributions to the Public Employees' Retirement System).

The report shall include a side-by-side comparison of current and future benefits and costs.

SEC. 2. There is hereby appropriated the sum of ten thousand dollars ($10,000) from the Public Employees' Retirement Fund to the Board of Administration of the Public Employees' Retirement System for expenditure in carrying out the purposes of this act.

CHAPTER 835

An act to amend Section 1284 of the Health and Safety Code, and to amend Section 5622 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 1284 of the Health and Safety Code is amended to read:

1284. A licensed inpatient mental health facility shall be subject to the provisions of Section 5622 of the Welfare and Institutions Code.

SEC. 2. Section 5622 of the Welfare and Institutions Code is amended to read:

5622. A licensed inpatient mental health facility shall, prior to the discharge of any patient who was placed in the facility under a county Short-Doyle plan, prepare a written aftercare plan. The

aftercare plan shall specify the following:

(a) Assessment of present level of functioning, including capacity to provide for food, clothing, and shelter.

(b) Diagnoses, including treatment initiated, medications, and dosage schedules.

(c) Six-month and twelve-month prognosis.

(d) The specific programs and services required so the person can minimize future confinement and receive the treatment in the least restrictive setting, including:

(1) Treatment objectives and goals stated in terms which allow for measurement of progress and the identification of the mental health personnel responsible for the implementation of the goals and objectives.

(2) Referral to providers of medical and mental health services.

(3) Identification of public social services, legal aid, educational, and vocational services.

(e) If the person is homeless, arrangements, if possible, for the voluntary placement of the person in a living environment suitable to his or her needs.

Any person undergoing treatment at a facility under the Lanterman-Petris-Short Act or a county Short-Doyle facility shall be entitled to obtain, upon request, a written aftercare plan.

A copy of the aftercare plan shall be transmitted to the local director of mental health services in the county of the person's placement who shall adopt and implement the plan, with any modifications or changes which are necessary in light of available resources, or when in the opinion of the local director of mental health services, other or alternate treatment is appropriate. Any patient who is released from a community treatment facility or state hospital on a voluntary basis may refuse any or all services under the written aftercare plan.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 836

An act to amend Section 1522.4 of the Health and Safety Code, relating to community care facilities.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 1522.4 of the Health and Safety Code is amended to read:

1522.4. (a) In addition to any other requirements of this chapter and except for foster family homes, small family homes, and certified family homes of foster family agencies, all of the following apply to any community care facility providing 24-hour care for children:

(1) The facility shall have one or more facility managers. "Facility manager," as used in this section, means a person on the premises with the authority and responsibility necessary to manage and control the day-to-day operation of a community care facility and supervise the clients. The facility manager, licensee, and administrator, or any combination thereof, may be the same person provided he or she meets all applicable requirements. If the administrator is also the facility manager for the same facility, this person shall be limited to the administration and management of only one facility.

(2) The facility manager shall have at least one year of experience working with the client group served, or equivalent education or experience, as determined by the department.

(3) A facility manager shall be at the facility at all times when one or more clients are present. To ensure adequate supervision of clients when clients are at the facility outside of their normal schedule, a current telephone number where the facility manager can be reached shall be provided to the clients, licensing agency, school, and any other agency or person as the department determines is necessary. The facility manager shall instruct these agencies and individuals to notify him or her when clients will be returning to the facility outside of the normal hours.

(4) The Legislature intends to upgrade the quality of care in licensed facilities. For the purposes of Sections 1533 and 1534, the licensed facility shall be inspected and evaluated for quality of care at least once each year, without advance notice and as often as necessary, without advance notice, to insure the quality of care being provided.

Paragraphs (1), (2), and (3) shall apply only to new facilities licensed for six or fewer children which apply for a license after January 1, 1985, and all other new facilities licensed for seven or more children which apply for a license after January 1, 1988. Existing facilities licensed for seven or more children shall comply by January

1, 1989.

(b) No employee of the state or county employed in the administration of this chapter or employed in a position that is in any way concerned with facilities licensed under this chapter shall hold a license or have a direct or indirect financial interest in a facility described in subdivision (a).

The department, by regulation, shall make the determination pursuant to the purposes of this section and chapter, as to what employment is in the administration of this chapter or in any way concerned with facilities licensed under this chapter and what financial interest is direct or indirect.

This subdivision does not prohibit the state or county from securing a license for, or operating, a facility that is otherwise required to be licensed under this chapter.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 837

An act relating to regional water quality control boards, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987]

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

SECTION 1. Notwithstanding the limit of one thousand five hundred dollars ($1,500) on the total compensation for each member of a regional water quality control board under Section 13205 of the Water Code, at the discretion of the State Water Resources Control Board, individual members of the regional water quality control boards for the San Francisco Bay region and the Central Valley region may be compensated for attendance at hearings convened by the State Water Resources Control Board on water quality standards for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. The maximum total amount of compensation for each region shall not exceed thirteen thousand dollars ($13,000) during the 1987–88 fiscal year and two thousand dollars ($2,000) during the 1988–89 fiscal year.

SEC. 2. This act shall have no force or effect after July 1, 1989.

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 ensure full participation by members of the San Francisco and Central Valley regional water quality control boards at hearings of the State Water Resources Control Board concerning water quality standards in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, it is necessary that this act take effect immediately.

CHAPTER 838

An act to add and repeal Section 25172.7 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

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

(a) With the passage of the Hazardous and Solid Waste Amendments of 1984, which amended the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.), small quantity generators that produce between 220 and 2,200 pounds of hazardous waste each month are required to establish specific waste management practices, including use of the Hazardous Waste Manifest System, by September 1986.

(b) In addition to federal requirements on managing hazardous waste, small quantity generators of hazardous waste are required to submit reports to state and local agencies, including a biennial report on the volume and type of hazardous waste generated.

(c) California may have as many as 200,000 small quantity generators of hazardous waste, but the number of generators using the Hazardous Waste Manifest System when shipping hazardous waste off-site and submitting required biennial reports is much less.

(d) A large number of small quantity generators may be unaware of federal and state hazardous waste management and reporting requirements.

(e) Although it is difficult for the state to notify all small quantity generators of new hazardous waste management requirements and methods to comply with these requirements, trade associations that represent small quantity generators could play a major role in educating their membership.

(f) Unfortunately, many trade associations that represent small quantity generators are also unaware of hazardous waste management requirements or ways to assist their membership in complying with the federal and state requirements.

(g) The State Department of Health Services should routinely

meet with trade association representatives of small quantity generators to provide them with regulatory and technical information on hazardous waste management.

SEC. 2. Section 25172.7 is added to the Health and Safety Code, to read:

25172.7. (a) Commencing January 1, 1988, the department shall conduct a series of industry-specific meetings with trade association representatives of major small quantity hazardous waste generators for the purposes specified in subdivision (b). The department shall include all of the following categories of trade associations in these meetings:

(1) Vehicle maintenance.

(2) Construction.

(3) Metal manufacturing.

(4) Photographic processing laboratories.

(5) Pesticide formulators and application services.

(6) Paint formulators.

(7) Circuit board manufacturers.

(8) Commercial research and development and testing laboratories.

(9) Educational, scientific, and research institutions.

(10) Medical laboratories and general medical and surgical hospitals.

(11) Dry cleaners.

(b) The department shall conduct the industry-specific meetings with trade association representatives for all of the following purposes:

(1) To inform the representatives of hazardous waste management laws and regulations.

(2) To suggest methods for assisting their membership in complying with hazardous waste laws and regulations.

(3) To facilitate the development of cooperative hazardous waste collection systems.

(4) To give the representatives the opportunity to express their concerns and needs.

(c) The department shall inform trade association representatives of an industry-specific meeting at least 30 days before the meeting. The department may use technical assistance from other federal, state, and local agency representatives, consultants, and large quantity hazardous waste generators. The department may request that the meetings be held during regular trade association meetings. The department shall designate a staff person to each trade association for future assistance.

(d) The department shall request trade association representatives to evaluate the usefulness of the informational meetings. Based upon the evaluation, the department shall determine whether or not to continue these meetings.

(e) This section shall remain in effect until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1990, deletes or extends that date.

CHAPTER 839

An act to amend Sections 1245, 3718, 3721, 3733, 3750, 3752, 3753, and 3754 of, and to add Sections 808, 3750.5, 3752.5, 3753.5, 3776, and 3777 to, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 808 is added to the Business and Professions Code, to read:

808. For purposes of this article, reports affecting respiratory care practitioners required to be filed under Sections 801, 802, and 803 shall be filed with the Respiratory Care Examining Committee.

SEC. 2. Section 1245 of the Business and Professions Code is amended to read:

1245. Notwithstanding any other provision of this chapter or of any other law, any individual may perform a blood gas analysis if all the following conditions exist:

(a) He or she performs the blood gas analysis in a clinic or a general acute care hospital, as defined respectively in Sections 1202 and 1250 of the Health and Safety Code.

(b) He or she has been instructed by a physician and surgeon licensed in this state, who is in charge of a department of pulmonary physiology or clinical pathology in licensed clinics or hospitals, as defined respectively in Sections 1202 and 1250 of the Health and Safety Code, in the proper procedure to be employed when performing a blood gas analysis.

(c) He or she performs the blood gas analysis under the direction and supervision of such a physician and surgeon.

(d) He or she submits the analysis for interpretation to the physician and surgeon under whose direction and supervision he or she performed the analysis.

Nothing contained in this section shall be construed as authorizing any individual, not otherwise authorized, to withdraw blood.

Nothing contained in subdivisions (a) and (b) is applicable to a person certified as a respiratory care practitioner under Chapter 8.3 (commencing with Section 3700). Those persons are authorized to perform those functions set forth in that chapter.

SEC. 3. Section 3718 of the Business and Professions Code is amended to read:

3718. The examining committee shall issue, suspend, and revoke certificates to practice respiratory care as provided in this chapter.

SEC. 4. Section 3721 of the Business and Professions Code is

amended to read:

3721. Notice of each regular or special meeting shall be sent to all committee members 15 days prior to the meeting. In addition, notice of each meeting of the committee shall be published in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 5. Section 3733 of the Business and Professions Code is amended to read:

3733. (a) Every applicant for a certificate under this chapter shall, at the time of application, be a person over 18 years of age, 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.

(b) The examining committee may order the denial of an application, or the issuance of a certificate with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a certificate, including, but not limited to, those causes specified in Sections 3750 and 3750.5.

SEC. 6. Section 3750 of the Business and Professions Code is amended to read:

3750. The examining committee may order 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) Gross negligence in his or her practice as a respiratory care practitioner.

(g) 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)).

(h) The aiding or abetting of any person to violate the provisions of this chapter or any regulations duly adopted under this chapter.

(i) The aiding or abetting of any person to engage in the unlawful practice of respiratory care.

(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

SEC. 7. Section 3750.5 is added to the Business and Professions Code, to read:

3750.5. In addition to any other grounds specified in this chapter, the examining committee may deny, suspend, or revoke the certificate of any applicant or certificate holder who has done any of the following:

(a) Obtained or possessed in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or administered to another, any controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7 (commencing with Section 4210) of Chapter 9 of this code.

(b) Used any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7 (commencing with Section 4210) of Chapter 9 of this code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, or other person, or the public or to the extent that the use impaired his or her ability to conduct with safety to the public the practice authorized by his or her certificate.

(c) Been convicted of a criminal offense involving the consumption or self-administration of any of the substances described in subdivisions (a) and (b), or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a), in which event the record of the conviction is conclusive evidence thereof.

(d) Been committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a) and (b), in which event the court order of commitment or confinement is prima facie evidence of that commitment or confinement.

(e) Falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a).

SEC. 8. Section 3752 of the Business and Professions Code is amended to read:

3752. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge 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 committee shall 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.

SEC. 9. Section 3752.5 is added to the Business and Professions Code, to read:

3752.5. For purposes of Division 1.5 (commencing with Section 475), and this chapter, a crime involving bodily injury or attempted bodily injury shall be considered a crime substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

SEC. 10. Section 3753 of the Business and Professions Code is amended to read:

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).

SEC. 11. Section 3753.5 is added to the Business and Professions Code, to read:

3753.5. (a) In any order issued in resolution of a disciplinary proceeding before the examining committee, the committee may request the administrative law judge to direct any practitioner found guilty of a charge involving a significant violation of Section 3750 or 3750.5, to pay to the committee a sum not to exceed the reasonable costs of the investigation and prosecution of the case.

(b) The costs to be assessed shall be fixed by the administrative law judge and shall not be increased by the examining committee. If the examining committee does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase any assessed costs.

(c) Where an order for recovery of costs is made and timely payment is not made as directed in the examining committee's decision as approved by the board, the committee may enforce the order for payment in the superior court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the committee may have as to any practitioner directed to pay costs.

(d) In any action for recovery of costs, proof of the committee's decision as approved by the board shall be conclusive proof of the validity of the order of payment and the terms for payment.

SEC. 12. Section 3754 of the Business and Professions Code is amended to read:

3754. The committee may deny an application for, or issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon, a certificate in any decision made after a hearing, as provided in Section 3753.

SEC. 13. Section 3776 is added to the Business and Professions Code, to read:

3776. Any person who has submitted to the examining committee

a check for fees which was returned for insufficient funds, shall pay all subsequent required fees by cashier's check or money order. The examining committee may make a written waiver of this requirement in appropriate cases.

SEC. 14. Section 3777 is added to the Business and Professions Code, to read:

3777. Where an applicant is issued a certificate to practice respiratory care, and it is later discovered that all required fees have not been paid, the certificate shall not be renewed or reinstated unless all past and current required fees have been paid.

CHAPTER 840

An act to amend, repeal, and add Section 14026.5 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 14026.5 of the Welfare and Institutions Code is amended to read:

14026.5. (a) The State Director of Health Services may issue Medi-Cal cards to Medi-Cal fraud investigators for the purpose of conducting investigations of Medi-Cal fraud, or a violation of the Medical Practice Act as set forth at Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code upon written request to the State Director of Health Services, or his or her designee, from the head of the requesting agency stating the purpose of the investigation. The request shall be based upon a specific complaint or information alleging Medi-Cal fraud. The request shall be based upon a specific complaint or information from an outside agency pursuant to its standard procedure for referring cases to another agency where there is suspicion of Medi-Cal fraud.

(b) (1) Upon a complaint by any individual alleging information creating a reasonable suspicion that any person is engaging in Medi-Cal fraud, the State Director of Health Services shall issue Medi-Cal cards for the purpose of conducting investigations of Medi-Cal fraud, or a violation of the Medical Practice Act as set forth in Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, upon an order of a magistrate issued upon a showing of reasonable suspicion that the person being investigated has committed or is committing Medi-Cal fraud or a violation of the Medical Practice Act as set forth in Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(2) For purposes of this section, "reasonable suspicion" means

that a peace officer subjectively entertains such a suspicion and that it is objectively reasonable for him or her to do so. The facts shall be those which would cause any reasonable peace officer in a like position drawing when appropriate on his or her training and experience, to suspect the same criminal activity and the same involvement by the person in question. A showing of reasonable suspicion may be made either by written statement under penalty of perjury or by oral statement taken under oath, recorded and transcribed.

(c) Nothing in this section shall be construed to mean that it is the exclusive method for conducting investigations for Medi-Cal fraud or for violations of the Medical Practice Act as set forth at Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(d) The State Department of Health Services shall report to the Legislature every six months commencing June 1, 1981, on the utilization of Medi-Cal cards issued pursuant to this section. The report shall include, among other matters, a description of the types of criminal investigations conducted pursuant thereto.

(e) The Legislative Analyst shall report to the Legislature by January 1, 1991, on the utilization of Medi-Cal cards issued pursuant to this section.

(f) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 2. Section 14026.5 is added to the Welfare and Institutions Code, to read:

14026.5. (a) The State Director of Health Services shall issue Medi-Cal cards to peace officers or persons working under that officers' immediate supervision for the purpose of conducting investigations of Medi-Cal fraud, or a violation of the Medical Practice Act as set forth at Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, upon an order of a magistrate issued pursuant to subdivision (c).

(b) Nothing in this section shall be construed to mean that it is the exclusive method for conducting investigations for Medi-Cal fraud or for violations of the Medical Practice Act as set forth at Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(c) A magistrate may issue an order for the issuance of Medi-Cal cards to peace officers upon a showing of reasonable suspicion that the person being investigated has committed or is committing Medi-Cal fraud or a violation of the Medical Practice Act as set forth in Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code. As used in this section, "reasonable suspicion" means that the peace officer subjectively entertains such a suspicion and that it is objectively reasonable for him to do so. The facts must be those which would cause any reasonable peace officer in a like position, drawing when appropriate on his training and

experience, to suspect the same criminal activity and the same involvement by the person in question. A showing of reasonable suspicion may be made either by written statement under penalty of perjury or by oral statement taken under oath, recorded and transcribed.

(d) The State Department of Health Services shall report to the Legislature every six months commencing June 1, 1981, on the utilization of Medi-Cal cards issued pursuant to this section. The report shall include, among other matters, a description of the types of criminal investigations conducted pursuant thereto.

(e) This section shall become operative January 1, 1992.

CHAPTER 841

An act to amend Sections 53649, 53651, 53651.4, 53661, 53664, and 53667 of the Government Code, relating to local agency investments.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 53649 of the Government Code is amended to read:

53649. The treasurer is responsible for the safekeeping of money in his or her custody and shall enter into any contract with a depository relating to any deposit which in his or her judgment is to the public advantage. The depository, and the agent of depository to the extent the agent of depository has been notified of deposits and the amount thereof, are responsible for securing moneys deposited pursuant to such a contract in accordance with Section 53652. One copy of each contract shall be filed with the auditor, controller, secretary, or corresponding officer of the local agency. The contract shall:

(a) Fix the duration of deposits, if appropriate.

(b) Fix the interest rate, if any.

(c) Provide conditions for withdrawal and repayment.

(d) Provide for placement of pooled securities in a named agent of depository in accordance with Section 53656.

(e) Grant authority for agent of depository to place securities for safekeeping in accordance with Section 53659.

(f) Set forth in accordance with Section 53665 the conditions upon which the administrator shall order pooled securities converted into money for the benefit of the local agency, and the procedure therefor.

(g) Provide for compliance in all respects with the provisions of this article and other applicable provisions of law.

(h) Provide, upon notice to the treasurer from the administrator,

that a treasurer may withdraw deposits in the event a depository fails to pay the assessments, fines, or penalties assessed by the administrator or may withdraw authorization for the placement of pooled securities in an agent of depository in the event that the agent of depository fails to pay the fines or penalties assessed by the administrator.

SEC. 2. Section 53651 of the Government Code is amended to read:

53651. Eligible securities are any of the following:

(a) United States Treasury notes, bonds, bills or certificates of indebtedness, or obligations for which the faith and credit of the United States are pledged for the payment of principal and interest, including the guaranteed portions of small business administration loans, so long as the loans are obligations for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Notes or bonds or any obligations of a local public agency (as defined in the United States Housing Act of 1949) or any obligations of a public housing agency (as defined in the United States Housing Act of 1937) for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Bonds of this state or of any local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes to pay the principal and interest of the bonds upon all property within its boundaries subject to taxation by the local agency or district, and in addition, sales tax revenue bonds, and revenue bonds and other obligations payable solely out of the revenues from a revenue-producing property owned, controlled or operated by the state, local agency or district or by a department, board, agency or authority thereof.

(d) Bonds of any public housing agency (as defined in the United States Housing Act of 1937, as amended) as are secured by a pledge of annual contributions under an annual contribution contract between the public housing agency and the Public Housing Administration if such contract shall contain the covenant by the Public Housing Administration which is authorized by subsection (b) of Section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in the contract pursuant to that subsection 22(b) shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on the obligations.

(e) Registered warrants of this state.

(f) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by the United States Postal Service, federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives

established under the Farm Credit Act of 1933, as amended, consolidated obligations of the federal home loan banks established under the Federal Home Loan Bank Act, bonds, debentures and other obligations of the Federal National Mortgage Association or of the Government National Mortgage Association established under the National Housing Act, as amended, bonds of any federal home loan bank established under that act, bonds, debentures and other obligations of the Federal Home Loan Mortgage Corporation established under the Emergency Home Finance Act of 1970, and obligations of the Tennessee Valley Authority.

(g) Notes, tax anticipation warrants or other evidence of indebtedness issued pursuant to Article 7 (commencing with Section 53820), Article 7.5 (commencing with Section 53840) or Article 7.6 (commencing with Section 53850) of this Chapter 4.

(h) State of California notes.

(i) Bonds, notes, certificates of indebtedness, warrants or other obligations issued by: (1) any state of the United States (except this state), or the Commonwealth of Puerto Rico, or any local agency thereof having the power to levy taxes, without limit as to rate or amount, to pay the principal and interest of such obligations, or (2) any state of the United States (except this state), or the Commonwealth of Puerto Rico, or a department, board, agency or authority thereof except bonds which provide for or are issued pursuant to a law which may contemplate a subsequent legislative appropriation as an assurance of the continued operation and solvency of the department, board, agency or authority but which does not constitute a valid and binding obligation for which the full faith and credit of such state or the Commonwealth of Puerto Rico are pledged, which are payable solely out of the revenues from a revenue-producing source owned, controlled or operated thereby; provided the obligations issued by an entity described in (1), above, are rated in one of the three highest grades, and such obligations issued by an entity described in (2), above, are rated in one of the two highest grades by a nationally recognized investment service organization that has been engaged regularly in rating state and municipal issues for a period of not less than five years.

(j) Obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development, Inter-American Development Bank, the Government Development Bank of Puerto Rico, the Asian Development Bank, or the African Development Bank.

(k) Participation certificates of the Export-Import Bank of the United States.

(*l*) Bonds and notes of the California Housing Finance Agency issued pursuant to Chapter 7 (commencing with Section 51350) of Part 3 of Division 31 of the Health and Safety Code.

(m) Promissory notes secured by first mortgages and first trust deeds which comply with Section 53651.2.

(n) Any bonds, notes, warrants, or other evidences of

indebtedness of a nonprofit corporation issued to finance the construction of a school building or school buildings pursuant to a lease or agreement with a school district entered into in compliance with the provisions of Section 39315 or 81345 of the Education Code, and also any bonds, notes, warrants or other evidences of indebtedness issued to refinance those bonds, notes, warrants, or other evidences of indebtedness as specified in Section 39317 of the Education Code.

(o) Any municipal securities, as defined by Section 3(a)(29) of the Securities Exchange Act of June 6, 1934 (15 U.S.C. Sec. 78, as amended), which are issued by this state or any local agency thereof.

(p) With the consent of the treasurer, letters of credit issued by the Federal Home Loan Bank of San Francisco which comply with Section 53651.6.

SEC. 3. Section 53651.4 of the Government Code is amended to read:

53651.4. (a) A depository which uses eligible securities of the class described in subdivision (m) of Section 53651 shall, within 90 days after the close of each calendar year or within a longer period as the administrator may specify, file with the administrator a report of an independent certified public accountant regarding compliance with this article and with regulations and orders issued by the administrator under this article with respect to eligible securities of that class. The report shall be based upon the audit, shall contain the information, and shall be in the form the administrator may prescribe. The depository shall provide a copy of the report to the treasurer on request.

(b) If a depository which is a state bank files with the administrator, not less than 90 days before the beginning of the calendar year, a notice that it elects to be examined by the administrator instead of filing a report of an independent certified public accountant under subdivision (a) for that calendar year, the depository shall be exempt from subdivision (a) for that calendar year and shall for that calendar year be subject to examination by the administrator regarding compliance with this article and with regulations and orders under this article with respect to eligible securities of the class described in subdivision (m) of Section 53651. The administrator shall provide a report to a treasurer with deposits in the examined state bank upon request of the treasurer.

(c) A national bank may apply to the administrator to be examined, and the administrator, in his or her discretion, may examine a national bank for the purposes of satisfying the requirements of subdivision (a). The administrator shall provide a report to a treasurer with deposits in the examined national bank upon request of the treasurer.

(d) Whenever the administrator examines a depository pursuant to subdivision (b) or (c), the depository shall pay, within 30 days after receipt of a statement from the administrator, a fee of two hundred dollars ($200) per day for each examiner engaged in the

examination.

SEC. 4. Section 53661 of the Government Code is amended to read:

53661. (a) The Superintendent of Banks shall act as Administrator of Local Agency Security and shall be responsible for the administration of Sections 53638, 53651, 53651.2, 53651.4, 53651.6, 53652, 53654, 53655, 53656, 53657, 53658, 53659, 53660, 53661, 53663, 53664, 53665, 53666, and 53667.

(b) The administrator shall have the powers necessary or convenient to administer and enforce the sections specified in subdivision (a).

(c) (1) The administrator shall issue regulations consistent with law as the administrator may deem necessary or advisable in executing the powers, duties, and responsibilities assigned by this article. The regulations may include regulations prescribing standards for the valuation, marketability, and liquidity of the eligible securities of the class described in subdivision (m) of Section 53651, regulations prescribing procedures and documentation for adding, withdrawing, substituting, and holding pooled securities, and regulations prescribing the form, content, and execution of any application, report, or other document called for in any of the sections specified in subdivision (a) or in any regulation or order issued under any of those sections.

(2) The administrator, for good cause, may waive any provision of any regulation adopted pursuant to paragraph (1) or any order issued under this article, where the provision is not necessary in the public interest.

(d) The administrator may enter into any contracts or agreements as may be necessary, including joint underwriting agreements, to sell or liquidate eligible securities securing local agency deposits in the event of the failure of the depository or if the depository fails to pay all or part of the deposits of a local agency.

(e) The administrator shall require from every depository a report certified by the agent of depository listing all securities, and the market value thereof, which are securing local agency deposits together with the total deposits then secured by the pool, to determine whether there is compliance with Section 53652. These reports may be required whenever deemed necessary by the administrator, but shall be required at least four times each year at the times designated by the Comptroller of the Currency for reports from national banking associations. These reports shall be filed in the office of the administrator by the depository within 20 business days of the date the administrator calls for the report.

(f) The administrator may have access to reports of examination made by the Comptroller of the Currency insofar as the reports relate to national banking association trust department activities which are subject to this article.

(g) (1) The administrator shall require the immediate substitution of an eligible security, where the substitution is

necessary for compliance with Section 53652, if (i) the administrator determines that a security listed in Section 53651 is not qualified to secure public deposits, or (ii) a treasurer, who has deposits secured by the securities pool, provides written notice to the administrator and the administrator confirms that a security in the pool is not qualified to secure public deposits.

(2) The failure of a depository to substitute securities, where the administrator has required the substitution, shall be reported by the administrator promptly to those treasurers having money on deposit in that depository and, in addition, shall be reported as follows:

(A) When that depository is a national bank, to the Comptroller of the Currency of the United States.

(B) When that depository is a state bank, to the Superintendent of Banks.

(C) When that depository is a federal association, to the Federal Home Loan Bank Board.

(D) When that depository is a savings association, to the Savings and Loan Commissioner.

(E) When that depository is a federal credit union, to the National Credit Union Administration.

(F) When that depository is a state credit union, to the Commissioner of Corporations.

(h) The administrator may require from each treasurer a registration report and at appropriate times a report stating the amount and location of each deposit together with other information deemed necessary by the administrator for effective operation of this article. The facts recited in any report from a treasurer to the administrator are conclusively presumed to be true for the single purpose of the administrator fulfilling responsibilities assigned to him or her by this article and for no other purpose.

(i) (1) If, after notice and opportunity for hearing, the administrator finds that any depository or agent of depository has violated or is violating, or that there is reasonable cause to believe that any depository or agent of depository is about to violate, any of the sections specified in subdivision (a) or any regulation or order issued under any of those sections, the administrator may order the depository or agent of depository to cease and desist from the violation or may by order suspend or revoke the authorization of the agent of depository. The order may require the depository or agent of depository to take affirmative action to correct any condition resulting from the violation.

(2) (A) If the administrator makes any of the findings set forth in paragraph (1) with respect to any depository or agent of depository and, in addition, finds that the violation or the continuation of the violation is likely to seriously prejudice the interests of treasurers, the administrator may order the depository or agent of depository to cease and desist from the violation or may suspend or revoke the authorization of the agent of depository. The order may require the depository or agent of depository to take affirmative action to correct

any condition resulting from the violation.

(B) Within five business days after an order is issued under subparagraph (A), the depository or agent of depository may file with the administrator an application for a hearing on the order. The administrator shall schedule a hearing at least 30 days, but not more than 40 days, after receipt of an application for a hearing or within a shorter or longer period of time agreed to by a depository or an agent of depository. If the administrator fails to schedule the hearing within the specified or agreed to time period, the order shall be deemed rescinded. Within 30 days after the hearing, the administrator shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded. The right of a depository or agent of depository to which an order is issued under subparagraph (A) to petition for judicial review of the order shall not be affected by the failure of the depository or agent of depository to apply to the administrator for a hearing on the order pursuant to this subparagraph.

(3) Whenever the administrator issues a cease and desist order under paragraph (1) or (2), the administrator may in the order restrict the right of the depository to withdraw securities from a security pool; and, in that event, both the depository to which the order is directed and the agent of depository which holds the security pool shall comply with the restriction.

(4) In case the administrator issues an order under paragraph (1) or (2) suspending or revoking the authorization of an agent of depository, the administrator may order the agent of depository at its own expense to transfer all pooled securities held by it to such agent of depository as the administrator may designate in the order. The agent of depository designated in the order shall accept and hold the pooled securities in accordance with this article and regulations and orders issued under this article.

(j) In the discretion of the administrator, whenever it appears to the administrator that any person has violated or is violating, or that there is reasonable cause to believe that any person is about to violate, any of the sections specified in subdivision (a) or any regulation or order issued thereunder, the administrator may bring an action in the name of the people of the State of California in the superior court to enjoin the violation or to enforce compliance with those sections or any regulation or order issued thereunder. Upon a proper showing a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and the court may not require the administrator to post a bond.

(k) In addition to other remedies, the administrator shall have the power and authority to impose the following sanctions for noncompliance with the sections specified in subdivision (a) after a hearing if requested by the party deemed in noncompliance. Any fine assessed pursuant to this subdivision shall be paid within 30 days after receipt of the assessment.

(1) Assess against and collect from a depository a fine not to

exceed two hundred fifty dollars ($250) for each day the depository fails to maintain with the agent of depository securities as required by Section 53652.

(2) Assess against and collect from a depository a fine not to exceed one hundred dollars ($100) for each day beyond the time period specified in subdivision (b) of Section 53663 the depository negligently or willfully fails to file in the office of the administrator a written report required by that section.

(3) Assess against and collect from a depository a fine not to exceed one hundred dollars ($100) for each day beyond the time period specified in subdivision (e) that a depository negligently or willfully fails to file in the office of the administrator a written report required by that subdivision.

(4) Assess and collect from an agent of depository a fine not to exceed one hundred dollars ($100) for each day the agent of depository fails to comply with any of the applicable sections specified in subdivision (a) or any applicable regulation or order issued thereunder.

(*l*) (1) In the event that a depository or agent of depository fails to pay a fine assessed by the administrator pursuant to subdivision (k) within 30 days of receipt of the assessment, the administrator may assess and collect an additional penalty of 5 percent of the fine for each month or part thereof that the payment is delinquent.

(2) If a depository fails to pay the fines or penalties assessed by the administrator, the administrator may notify local agency treasurers with deposits in the depository.

(3) If an agent of depository fails to pay the fines or penalties assessed by the administrator, the administrator may notify local agency treasurers who have authorized the agent of depository as provided in Sections 53649 and 53656, and may by order revoke the authorization of the agent of depository as provided in subdivision (i).

SEC. 5. Section 53664 of the Government Code is amended to read:

53664. The individual reports specified in Sections 53654, 53660, 53661, and 53663 are not public documents and are not open to inspection by the public.

SEC. 6. Section 53667 of the Government Code is amended to read:

53667. (a) Expenses incurred by the administrator in carrying out the duties and responsibilities assigned to the administrator by the sections specified in subdivision (a) of Section 53661, shall be borne by the Local Agency Deposit Security Fund, which is hereby created and continuously appropriated to the administrator for the administration of the sections specified in subdivision (a) of Section 53661. This fund shall consist of fines levied pursuant to Section 53661, fees collected pursuant to the sections specified in subdivision (a) of Section 53661, and assessments levied pursuant to this section.

(b) Each fiscal year the administrator shall levy an assessment on

a pro rata basis on those depositories which at any time during the preceding fiscal year held local agency deposits. The total assessment levied on all of those depositories shall be in an amount which, when added to the amount of fines and fees that the administrator estimates will be collected during the fiscal year when the assessment is levied, is sufficient in the judgment of the administrator to meet the expenses of the administrator in administering the sections specified in subdivision (a) of Section 53661 and to provide a reasonable reserve for contingencies. The basis of the apportionment of the assessment among the depositories assessed shall be the proportion that the average amount of local agency deposits held by each of those depositories bears to the average total amount of local agency deposits held by all of those depositories as shown by the reports of depositories to the administrator for the preceding fiscal year, as required in subdivision (e) of Section 53661; provided, however, that the amount of the assessment levied on each of those depositories shall be not less than twenty-five dollars ($25).

(c) The administrator shall notify each depository by mail of the amount levied against it. The depository shall pay the amount levied within 20 days after such notice into the Local Agency Deposit Security Fund for the administration of the sections specified in subdivision (a) of Section 53661. If payment is not made to the administrator within such time, the administrator shall assess and collect, in addition to the annual assessment, a penalty of 5 percent of the assessment for each month or part thereof that the payment is delinquent. If a depository fails to pay the assessment or penalties assessed by the administrator, the administrator may notify local agency treasurers with deposits in the depository.

CHAPTER 842

An act to amend Sections 31726 and 31726.5 of, and to add Section 31728.2, to the Government Code, relating to county retirement.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 31726 of the Government Code is amended to read:

31726. Upon retirement for nonservice-connected disability a member who has attained age 65 shall receive his or her service retirement allowance.

Every member under age 65 who is retired for nonservice-connected disability and who is not simultaneously retired as a member on deferred retirement of the State Employees' Retirement System or a retirement system established under this

chapter in another county shall receive a disability retirement allowance which shall be the greater of:

(1) The sum to which he or she would be entitled as service retirement; or

(2) A sum which shall consist of:

(a) An annuity which is the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.

(b) If, in the opinion of the board, his or her disability is not due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on his or her part, a disability retirement pension purchased by contributions of the county or district.

(c) If, in the opinion of the board, his or her disability is not due to conviction of a felony or criminal activity which caused or resulted in the member's disability, a disability retirement pension purchased by contributions of the county or district.

Subdivision (c) shall only apply to a person who becomes a member of the system on or after January 1, 1988.

SEC. 2. Section 31726.5 of the Government Code is amended to read:

31726.5. Upon retirement for nonservice-connected disability a safety member who has attained age 55 shall receive his or her service retirement allowance. Every safety member under age 55 who is retired for nonservice-connected disability and who is not simultaneously retired as a member on deferred retirement of the Public Employees' Retirement System or a retirement system established under this chapter in another county shall receive a disability retirement allowance which shall be the greater of:

(a) The sum to which he or she would be entitled to as service retirement; or

(b) A sum which shall consist of:

(1) An annuity which is the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.

(2) If, in the opinion of the board, his or her disability is not due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on his or her part, a disability retirement pension purchased by contributions of the county or district.

(3) If, in the opinion of the board, his or her disability is not due to conviction of a felony or criminal activity which caused or resulted in the member's disability, a disability retirement pension purchased by contributions of the county or district.

Paragraph (3) shall only apply to a person who becomes a member of the association on or after January 1, 1988.

SEC. 3. Section 31728.2 is added to the Government Code, to read:

31728.2. Notwithstanding Sections 31728 and 31728.1, if, in the opinion of the board, the disability is due to or results from the conviction of the member of a felony under state or federal law or if the board determines that the criminal activity caused or resulted in the member's disability, the board may pay the member a

lump-sum which is equal to the sum of his or her accumulated contributions in lieu of the benefits to which the member would otherwise be entitled as set forth in this article and provided that nothing in this section shall be construed to divest a member of any vested right to a service retirement allowance.

This section shall apply only to a person who becomes a member of the system on or after January 1, 1988.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 843

An act to amend Section 832.4 of the Penal Code, relating to peace officers.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 832.4 of the Penal Code is amended to read:

832.4. (a) Any undersheriff or deputy sheriff of a county, any policeman of a city, and any policeman of a district authorized by statute to maintain a police department, who is first employed after January 1, 1974, and is responsible for the prevention and detection of crime and the general enforcement of the criminal laws of this state, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within 18 months of his employment in order to continue to exercise the powers of a peace officer after the expiration of such 18-month period.

(b) Every peace officer listed in subdivision (a) of Section 830.1, except a sheriff, elected constable, or elected marshal, who is employed after January 1, 1988, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training upon completion of probation, but in no case later than 24 months after his or her employment, in order to continue to exercise the powers of a peace officer after the expiration of the 24-month period.

In those cases where the probationary period established by the employing agency is 24 months, the peace officers described in this subdivision may continue to exercise the powers of a peace officer for an additional three-month period to allow for the processing of the certification application.

CHAPTER 844

An act to amend Sections 14029.1, 14046, 14081.2, 14125, and 14131 of, and to add Section 14028.5 to, the Corporations Code, relating to small business development.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 14028.5 is added to the Corporations Code, to read:

14028.5. The board shall adopt regulations concerning the implementation of direct lending as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare within the meaning of subdivision (b) of Section 11346.1 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall not remain in effect for more than 180 days unless the board complies with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

SEC. 2. Section 14029.1 of the Corporations Code is amended to read:

14029.1. The Small Business Expansion Fund is created solely for the purpose of receiving state money to make loans, guarantees, and restricted investments pursuant to the provisions of this article.

SEC. 3. Section 14046 of the Corporations Code is amended to read:

14046. (a) Except as provided in subdivision (d) of Section 14131 and Section 14083, the purpose of a regional small business development corporation loan guarantee fund shall be to make and guarantee loans, approved by the regional corporation, which meet the California Small Business Development Corporation Law loan criteria established by the board, policies of the corporation, and provisions of Article 7.5 (commencing with Section 14066). The state shall not be liable or obligated in any way as a result of the allocation of state money to a regional small business development corporation loan guarantee fund beyond the state money which is allocated and deposited in the fund pursuant to this chapter, and which is not otherwise withdrawn by the state pursuant to this chapter.

(b) A summary of all loans to which a state guarantee is attached

shall be submitted to the executive director upon completion of the loan agreement.

SEC. 4. Section 14081.2 of the Corporations Code is amended to read:

14081.2. A small business development corporation may charge the borrower or financial institution a loan guarantee fee on all loans made or guaranteed by the corporation to defray the operating expenses of the corporation. The amount of the fee shall be determined by the board.

SEC. 5. Section 14125 of the Corporations Code is amended to read:

14125. (a) The board may authorize the establishment of a new regional corporation which will become an urban development corporation or rural development corporation within six months of such designation. To qualify for consideration as a regional corporation, an organization must have had a minimum of two years' experience in small business finance, management, and technical assistance. These qualifications may be waived by the board and the executive director in areas of high unemployment.

(b) The regional corporations designated as urban development corporations or rural development corporations shall within a reasonable period of time take action to amend their articles of incorporation and bylaws to conform to this article.

(c) Thirty days after designation as an urban development corporation or rural development corporation, the corporation shall submit to the board a plan for an urban or rural development program which is independent of state funding, pursuant to this chapter, within four years. The board shall notify the urban development corporation or rural development corporation of its recommended acceptance or rejection for cause, within 60 days of submission of the plan. Upon acceptance, the plan shall be the basis for all the urban development corporations' or rural development corporations' funding pursuant to this chapter. Until the plan is accepted, the urban development corporation or rural development corporation designee shall continue to operate as a regional corporation as defined in Articles 1 (commencing with Section 14000) to 13 (commencing with Section 14120), inclusive.

(d) The state, through the Office of Small Business, shall continue to have jurisdiction and to exercise supervision over urban development corporations and rural development corporations which have achieved independence from state administrative funding. The state shall have the right to review and approve the activities and expenditure of funds of those urban development corporations and rural development corporations to ensure conformity with the provisions and intent of the Small Business Corporation Law and the regulations thereof. The use of state funds paid out to the corporation loan guarantee fund and the return on those funds from investment pursuant to Section 14044 is conditional pursuant to Sections 14025 and 14044.1. Each corporation shall enter

into a written signed agreement with the state at the beginning of each fiscal year. The agreement shall govern the activities in which the corporations engage, the investment of state funds and its return, and the budgeted administrative expenses the corporations may incur. In the event the state and corporation do not reach an agreement, or the state finds the corporation has violated the terms of an active agreement, the state may take action under Sections 14025 and 14044.1 or other action as appropriate. In the event the state and corporation do not reach agreement or the state finds the corporation has violated the terms of an active agreement, the corporation shall have no authority to withdraw or encumber the corporation loan guarantee funds or the return on those funds by the issuance of guarantees, by incurring expenses against the fund and its return in any manner whatsoever, and the state may take action under Sections 14025 and 14044.1 or other action as appropriate. Any such guarantee or other encumbrance made by the corporation in violation of this section shall be null and void, and neither the state nor the corporation loan guarantee funds will be liable therefor.

SEC. 6. Section 14131 of the Corporations Code is amended to read:

14131. (a) The UDC's or RDC's guarantee shall be backed by funds on deposit in the UDC's or RDC's own loan guarantee fund account established pursuant to Articles 5 (commencing with Section 14040) and 6 (commencing with Section 14045).

(b) Loans made under an UDC or RDC guarantee shall be secured by a 100 percent reserve. The guarantee portion may be no more than 90 percent of the required total financing arranged from all lending sources. However, the guaranteed portion may be 100 percent for revolving lines of credit, personal farm operating loans, interim financing where another lender or guarantor will take out the corporation's position within 180 days, loans to UDC's or RDC's, and loans where traditional lenders have turned down the loan because it is too small.

(c) The UDC or RDC shall guarantee loans wherever possible. However, earnings from the trust funds may be used for direct lending provided that UDC or RDC direct loan funds do not constitute more than one-third of the loan, with the following exceptions:

(1) If a firm has received a Phase 1 or Phase 2 Small Business Innovation Research Grant awarded by a federal agency and is suffering cash flow problems because of delay in receipt of grant funds from the date of incurring expenses related to the grant project, a UDC or RDC may advance an interim loan covering 80 percent of the project expenses from trust fund earnings, provided the firm assigns proceeds of grant invoices (or other documentations submitted by the firm to the federal agency for payment) to the corporation for payment of the interim loan advanced and the federal agency agrees to the assignment.

(2) Any RDC that is making a direct loan to a farmer or farm

corporation may use trust funds from both the income and trust account, provided that at least 50 percent of the direct loan portfolio is guaranteed by a governmental agency, excluding any state government agency. The total amount of direct loans issued by a corporation shall not exceed 33 percent of the trust fund, including trust income, as determined at the time each loan is made. Only unencumbered funds shall be available for direct lending. Each RDC shall submit an application to the department for participation in the direct loan program under this section. In its capacity as a direct lender, the RDC may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. Funds raised through the secondary market shall not be considered in arriving at the percentage of the loan portfolio to be guaranteed by a government agency above. Any direct loan made by an RDC under this section shall not exceed three hundred fifty thousand dollars ($350,000). The department, in consultation with the board, shall issue regulations governing these direct loans on or before March 1, 1988.

(d) In furtherance of the purposes of this part, up to one-half of the corporate loan guarantee funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) The UDC or RDC may assume a negotiated equity position of not more than 5 percent of the current equity in an eligible small business, in lieu of part or all of the fees chargeable to such business or through direct purchase, provided state funds are not used to purchase the equity position. An equity position of 5 percent or less shall not be construed as a conflict of interest in terms of financial and technical assistant participation.

(f) As a method of implementing the direct loan programs established in this chapter, the Office of Small Business may loan trust funds to an RDC for the express purpose of lending those funds to an identified borrower. The loan by the Office of Small Business to the RDC shall be in the amount and terms similar to the loan between the RDC and the borrower. The loan between the Office of Small Business and the RDC shall be evidenced by the loan agreement between the RDC and the borrower and collateralized by the note between the RDC and the borrower. In the absence of fraud on the part of the RDC, the liability of the RDC to repay the loan to the Office of Small Business is limited to the repayment received by the corporation from the borrower.

SEC. 7. In enacting this act, it is the intent of the Legislature to develop a program for collecting and liquidating defaulted loans so that urban development corporations and rural development corporations can qualify to become full-service lenders under the Small Business Administration, and so that rural development corporations may qualify for full-service lender status under the Farmers Home Administration.

CHAPTER 845

An act to amend Sections 5903, and 5906 of, and to add Sections 5903.5 and 5909 to, the Government Code, relating to public financing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 5903 of the Government Code is amended to read:

5903. If, prior to issuing any bonds, the legislative body determines that the interest payable on the bonds to be issued by the state or local government will be subject to federal income taxation under the law in existence on the date of issuance or pending on the date of issuance with an effective date preceding the date of issuance, then notwithstanding any other provision of law, the ordinance, resolution, indenture, agreement, or other instrument providing for the issuance of the bonds may provide for any of the following:

(a) The bonds shall be in such denominations, in such form, either bearer or registered, and payable at such place or places, either within or without the United States, at such time or times, in lawful money of the United States of America, with such terms of redemption, and at such interest rate or rates, either fixed or variable, including methods of determining such rate or rates if variable, as the legislative body shall determine.

(b) The bonds shall be sold at public or private sale, in such manner and place or places, either within or without the United States, and at such price or prices, above or below par, as the legislative body shall determine.

(c) In connection with, or incidental to, the sale and issuance of the bonds, the state or local government may offer, sell, and issue warrants for additional bonds, as well as issue additional bonds pursuant to these warrants on terms consistent with this chapter, and may enter into any contracts which the legislative body determines to be necessary or appropriate to place the obligation of the state or local government, as represented by the bonds and the contract or contracts, in whole or in part on the interest rate, cash flow, or other basis desired by the legislative body, including, without limitation, contracts commonly known as interest rate swap agreements, forward payment conversion agreements, futures, or contracts providing for payments based on levels of or changes in interest rates, or contracts to exchange cash flows or a series of payments, or contracts, including, without limitation, options, puts or calls to hedge payment, rate, spread, or similar exposure. These contracts or

arrangements may also be entered into by state or local governments in connection with, or incidental to, entering into any agreement which secures bonds, including bonds issued by private entities. These contracts and arrangements shall be made upon the terms and conditions established by the legislative body, after giving due consideration for the creditworthiness of the counterparties, where applicable, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate. In addition, these contracts and arrangements may be made only if the bonds are rated in one of the three highest rating categories by two nationally recognized rating agencies, and if there has been receipt, from any rating agency rating the bonds, of written evidence that the contract or agreement will not adversely affect the rating.

(d) In connection with, or incidental to, the sale and issuance of the bonds, or entering into any of the contracts or arrangements referred to in subdivision (c), the state or local government may enter into such credit enhancement or liquidity agreements, with such payment, interest rate, security, default, remedy, and other terms and conditions as the legislative body shall determine.

(e) Proceeds of the bonds and any moneys set aside or pledged to secure payment of the bonds, or any of the contracts entered into pursuant to subdivision (c), may be invested in securities or obligations described in the ordinance, resolution, indenture, agreement, or other instrument providing for the issuance of the bonds and may be pledged to and used to service any of the contracts or agreements entered into pursuant to this section.

SEC. 2. Section 5903.5 is added to the Government Code, to read:

5903.5. Section 5903 shall apply to any bonds the interest on which will not be subject to federal income taxation under the law in existence on the date of issuance or pending on the date of issuance with an effective date preceding the date of issuance, notwithstanding any other provision of law, if the bonds are issued by the same state or local government for the same project or purpose and within 45 days of the date of issuance of bonds described in Section 5903.

SEC. 3. Section 5906 of the Government Code is amended to read:

5906. Any bonds issued by a state or local government pursuant to this chapter, or otherwise, and the purchasers or holders thereof, shall be exempt from the usury provisions of Section 1 of Article XV of the California Constitution. Any loan, lease, installment sale, investment, forbearance of money, or other agreement between a user of the proceeds of or other moneys pledged to bonds and the issuer of the bonds, or entered into by or on behalf of the issuer of the bonds which provides for the use of the proceeds of the bonds or other moneys pledged to or securing the bonds, and the issuer of the bonds or any person acting on its behalf in connection with the foregoing shall be exempt from the usury provisions of Section 1 of Article XV of the California Constitution. This section creates and

authorizes exempted classes of transactions and persons pursuant to Section 1 of Article XV of the California Constitution.

SEC. 4. Section 5909 is added to the Government Code, to read:

5909. To the extent that the provisions of this chapter are inconsistent with any other provision of general law or special act or any part thereof, now or hereafter enacted, the provisions of this chapter shall be controlling.

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:

Since federal legislation has been enacted which makes interest on certain types of bonds issued by governmental entities subject to federal taxation, in order to provide the state and local governments with the necessary flexibility for successful financing of public programs, as soon as possible, it is necessary that this act go into immediate effect.

CHAPTER 846

An act to add Chapter 12 (commencing with Section 5920) to Division 6 of Title 1 of the Government Code, relating to public financing.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987]

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

SECTION 1. Chapter 12 (commencing with Section 5920) is added to Division 6 of Title 1 of the Government Code, to read:

CHAPTER 12. PUBLIC FINANCE CONTRACTS

5920. The Legislature finds and declares that the incurring or carrying of obligations and making and managing of investments by state and local governments involves a variety of interest rates, payment, and other risks, that a number of financial instruments are available to offset, hedge, or reduce, and improve net costs, and that many state agencies and local governments lack express statutory authority to take advantage of those instruments.

5921. As used in this chapter, the following definitions apply, unless the context otherwise indicates or requires another or different meaning or intent:

(a) "Bonds" mean bonds, notes, bond anticipation notes, commercial paper, or other evidences of indebtedness, or lease, installment purchase, or other agreements or certificates of participation therein.

(b) "State or local government" means the state, any department, agency, board, commission, or authority of the state, or any city, city and county, county, public district, public corporation, authority, agency, board, commission, or other public entity.

5922. Notwithstanding any other provision of law, all of the following apply:

(a) In connection with, or incidental to, the issuance or carrying of bonds, or acquisition or carrying of any investment or program of investment, any state or local government may enter into any contracts which the state or local government determines to be necessary or appropriate to place the obligation or investment of the state or local government, as represented by the bonds, investment or program of investment and the contract or contracts, in whole or in part, on the interest rate, currency, cash-flow, or other basis desired by the state or local government, including, without limitation, contracts commonly known as interest rate swap agreements, currency swap agreements, forward payment conversion agreements, futures, or contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, stock or other indices, or contracts to exchange cash flows or a series of payments, or contracts, including, without limitation, interest rate floors or caps, options, puts or calls to hedge payment, currency, rate, spread, or similar exposure. These contracts or arrangements may also be entered into by state or local governments in connection with, or incidental to, entering into or maintaining any agreement which secures bonds, including bonds issued by private entities. These contracts and arrangements shall be entered into with the parties, selected by the means, and contain the payment, security, default, remedy, and other terms and conditions, determined by the state or local government, after giving due consideration for the creditworthiness of the counterparties, where applicable, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate.

No local government shall enter into any of the contracts or arrangements pursuant to this subdivision, unless its governing body first determines that the contract or arrangement or program of contracts is designed to reduce the amount or duration of payment, currency, rate, spread, or similar risk or result in a lower cost of borrowing when used in combination with the issuance of bonds or enhance the relationship between risk and return with respect to the investment or program of investment in connection with, or incident to, the contract or arrangement which is to be entered into.

(b) Bonds issued by a state or local government may be payable in accordance with their terms, in whole or in part, in currency other than lawful money of the United States of America, provided that the state or local government enter into a currency swap or similar agreement for payments in lawful money of the United States of America, which covers the entire amount of the debt service payment obligation of the state or local government with respect to

the bonds payable in other currency, and provided further that if the term of that agreement is less than the term of the bonds, the state or local government shall covenant to enter into additional agreements as may be necessary to cover the entire amount of the debt service payment obligation. An issuer shall include in its written notice to the California Debt Advisory Commission pursuant to subdivision (g) of Section 8855 a statement of its intent to issue bonds payable in a currency other than lawful money of the United States of America.

(c) In connection with, or incidental to, the issuance or carrying of bonds, or entering into any of the contracts or arrangements referred to in subdivision (a), the state or local government may enter into credit enhancement or liquidity agreements, with payment, interest rate, currency, security, default, remedy, and other terms and conditions as the state or local government determines.

(d) Proceeds of bonds and any moneys set aside and pledged to secure payment of the bonds or any of the contracts entered into pursuant to this section, may be invested in securities or obligations described in the ordinance, resolution, indenture, agreement, or other instrument providing for the issuance of the bonds or the contract and may be pledged to and used to service any of the contracts or agreements entered into pursuant to this section.

5923. (a) To the extent that this chapter is inconsistent with any other general statute or special act or parts thereof, now or hereafter enacted, this chapter is controlling.

(b) This chapter shall be liberally construed to effect its purpose.

CHAPTER 847

An act to amend Section 1091 of the Government Code, relating to public officers and employees.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 1091 of the Government Code is amended to read:

1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body of the board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the

vote or votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means any of the following:

(1) That of an officer or employee of a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) That of an employee or agent of the contracting party, if that contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of the contracting party.

(3) That of an employee or agent of the contracting party, if all of the following conditions are met:

(A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.

(B) The contract is competitively bid and is not for personal services.

(C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.

(D) The contracting party has 10 or more other employees.

(E) The employee or agent did not directly participate in formulating the bid of the contracting party.

(F) The contracting party is the lowest responsible bidder.

(4) That of a parent in the earnings of his or her minor child for personal services.

(5) That of a landlord or tenant of the contracting party.

(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract.

(7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed

under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.

(8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.

(9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.

(10) That of an officer, director, or employee of a bank, bank holding company, or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

(11) That of an engineer, geologist, or architect employed by a consulting engineering or architectural firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.

(12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.

(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

SEC. 2. Section 1091 of the Government Code is amended to read:

1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body of the board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means any of the

following:

(1) That of an officer or employee of a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5, or that of an employee of an educational institution or agency.

(2) That of an employee or agent of the contracting party, if that contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of the contracting party.

(3) That of an employee or agent of the contracting party, if all of the following conditions are met:

(A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.

(B) The contract is competitively bid and is not for personal services.

(C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.

(D) The contracting party has 10 or more other employees.

(E) The employee or agent did not directly participate in formulating the bid of the contracting party.

(F) The contracting party is the lowest responsible bidder.

(4) That of a parent in the earnings of his or her minor child for personal services.

(5) That of a landlord or tenant of the contracting party.

(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract.

(7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.

(8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.

(9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.

(10) That of an officer, director, or employee of a bank, bank holding company, or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

(11) That of an engineer, geologist, or architect employed by a consulting engineering or architectural firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.

(12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.

(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

SEC. 3. Section 2 of this bill incorporates amendments to Section 1091 of the Government Code proposed by both this bill and SB 1494. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 1091 of the Government Code, and (3) this bill is enacted after SB 1494, in which case Section 1 of this bill shall not become operative.

CHAPTER 848

An act to amend Section 9975 of, and to add Section 9989.10 to, the Business and Professions Code, relating to employment agencies, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 9975 of the Business and Professions Code is amended to read:

9975. (a) If an employment agency sends an applicant for employment and the applicant accepts employment other than that position specified in the bona fide order for employment to which the applicant was sent, but with the same employer, the agency shall be entitled to a fee for the employment of the applicant computed under the terms of the fee schedule in effect in the agency at the time of referral, provided that the applicant accepts employment within 180 days of the date of referral. The expiration date of the referral shall be stated in the contract.

(b) If an employment agency sends an applicant for employment to a company with a bona fide job order and the company subsequently sends the applicant to a different division of the company and if the applicant is hired by the referred-to division, the employment agency shall be entitled to a fee according to the terms of the fee schedule in effect in the agency at the time of referral.

(c) In interagency disputes concerning the earning of a fee for placement of an applicant, the fee shall be earned by the agency responsible for the applicant being placed. A reasonable effort shall be made by the billing agency to determine that it is entitled to the fee. The applicant shall be responsible for only one full fee for any single placement, and this fact shall be so stated in the contract.

SEC. 2. Section 9989.10 is added to the Business and Professions Code, to read:

9989.10. (a) Sections 9989.2, 9989.3, 9989.4, and 9989.5, paragraphs (3) and (4) of subdivision (b) of Section 9989.6, and Section 9989.7 do not apply to any job listing service which meets the requirements specified in subdivision (b).

(b) A job listing service shall be exempt pursuant to subdivision (a) if it complies with all of the following:

(1) Does not provide, offer, or imply the offer of, services related to employment.

(2) Does not offer or sell lists of employers or job openings to job seekers on an in-person basis.

(3) Maintains records of all its advertisements, identified by date and publication, and the sources of information used for the preparation of lists of employers and job openings, from which the

bureau can determine the accuracy of any statistics regarding success rate or similar statistics used in its advertising, promotional materials, or oral or written statements to job seekers.

(4) Identifies, on each list of employers and job openings, its general source of information for jobs included on that list when the source of information is a publication or other public record.

(5) Provides, at or before the time of delivery of the list, a prominent written statement to the job seeker granting the job seeker a right to return the list for an immediate refund of the purchase price during a stated period of time which expires not less than 10 days from the date of delivery of the list. The list shall be deemed returned upon delivery to the address from which it was obtained or upon deposit in the mail properly addressed to that address, with postage prepaid.

SEC. 3. Section 9992 of the Business and Professions Code is amended to read:

9992. Upon receipt of a complaint, or upon its own motion, the bureau shall ascertain whether or not there is a probable violation by the licensee constituting a ground for disciplinary action and may make or cause to be made such investigation as it deems necessary in order to ascertain this fact. All inspections and investigations are to be performed by personnel of the department's division of investigation.

Fee controversies which do not involve a violation of any provision of this chapter, or of a rule or regulation of the bureau, shall not be a proper subject for complaint under this section.

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:

There are various job listing services which, because of their limited activities, should not be required to be licensed by the Bureau of Personnel Services but should be monitored to ensure consumer protection; and there are basic inequities that appear in the Employment Agency Law that work a hardship or injustice to some persons. In order to achieve this objective at the earliest possible time, it is necessary that this act go into immediate effect.

CHAPTER 849

An act to amend Section 879 of, and to add Sections 709 and 871.5 to, the Public Utilities Code, relating to telecommunications.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 709 is added to the Public Utilities Code, to read:

709. The Legislature hereby finds and declares that the policies for telecommunications in California are both of the following:

(a) To assure the continued affordability and widespread availability of high quality basic telephone service for all Californians.

(b) To encourage the development and deployment of new technologies and the equitable provision of services in a way which efficiently meets consumer need and encourages the availability of a wide choice of state-of-the-art services.

SEC. 2. Section 871.5 is added to the Public Utilities Code, to read:

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

(a) The Moore Universal Telephone Service Act has been, and continues to be, an important means to assuring that every Californian enjoys his or her basic right to communicate by enabling more than 800,000 California households to obtain affordable basic residential telephone service.

(b) Every means should be employed by the commission and telephone corporations operating within service areas which furnish universal telephone service to ensure that every person qualified to receive universal telephone service is informed of and is afforded the opportunity to subscribe to that service.

(c) The furnishing of universal telephone service is in the public interest and should be supported fairly and equitably by every telephone corporation, and the commission, in administering the universal telephone service program, should implement the program in a way that is equitable, nondiscriminatory, and without competitive consequences for the telecommunications industry in California.

SEC. 3. Section 879 of the Public Utilities Code is amended to read:

879. (a) The commission shall, at least annually, initiate a proceeding to set rates for universal telephone service. All telephone corporations providing universal telephone service shall annually file, on a date set by the commission, proposed universal telephone service rates and a statement of projected revenue needs to meet the funding requirements to provide universal telephone service to

qualified subscribers, together with proposed funding methods to provide the necessary funding. These funding methods shall include identification of those services whose rates shall be adjusted to provide the necessary funding.

(b) The commission shall commence a proceeding within 30 days after the date set for the filings required in subdivision (a), giving interested parties an opportunity to comment on the proposed rates and funding requirements and the proposed funding methods. The commission may change the rates, funding requirements, and funding methods proposed by the telephone corporations in any manner necessary, including reasonably spreading the funding among the services offered by the telephone corporations, to meet the public interest. Within 60 days of the annual filing, the commission shall issue an order setting universal telephone service rates and funding methods for each telephone corporation making a filing as required in subdivision (a). The commission may establish a universal service pool composed of the rate adjustments and surcharges imposed by the commission pursuant to this section for the purpose of funding universal telephone service.

(c) Any order issued by the commission pursuant to this section shall require telephone corporations providing universal telephone service to apply the funding requirement in the form of a surcharge to service rates which may be separately identified on the bills of customers using those services. The commission shall not allow any surcharge under this section on the rates charged by those telephone corporations for universal telephone service.

(d) The commission shall permit telephone corporations operating between service areas to adjust the rates of any service which may be affected by any surcharge imposed by this section.

CHAPTER 850

An act to amend Sections 103, 107, 128.5, 130, 131, 164, 2732.1, 2733, 2741, 2742, 2746.6, 2761, 6980.10, 7500.1, 7507.9, 9941, 9946, and 19210 of, to amend and renumber Section 483 of, to add Section 5061 to, and to repeal Sections 205 and 2660.5 of, the Business and Professions Code, and to amend and renumber Section 44052 of the Health and Safety Code, relating to business and professions, and making an appropriation therefor.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 103 of the Business and Professions Code is amended to read:

103. Each member of a board, commission, or committee created

in the various chapters of Division 2 (commencing with Section 500) and Division 3 (commencing with Section 5000), in Article 3.5 (commencing with Section 316) of Chapter 4, and in Chapter 2 (commencing with Section 18600) and Chapter 3 (commencing with Section 19000) of Division 8, shall receive the moneys specified in this section when authorized by the respective provisions.

Each such member shall receive a per diem of one hundred dollars ($100) for each day actually spent in the discharge of official duties, and shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties.

The payments in each instance shall be made only from the fund from which the expenses of the agency are paid and shall be subject to the availability of money.

Notwithstanding any other provision of law, no public officer or employee shall receive per diem salary compensation for serving on those boards, commissions, committees, or the Consumer Advisory Council on any day when the officer or employee also received compensation for his or her regular public employment.

SEC. 2. Section 107 of the Business and Professions Code is amended to read:

107. Pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution, each board may appoint a person exempt from civil service and may fix his or her salary, with the approval of the Department of Personnel Administration pursuant to Section 19825 of the Government Code, who shall be designated as an executive officer unless the licensing act of the particular board designates the person as a registrar.

SEC. 3. Section 128.5 of the Business and Professions Code is amended to read:

128.5. (a) Notwithstanding any other provision of law, if at the end of any fiscal year, an agency within the Department of Consumer Affairs, except the agencies referred to in subdivision (b), has unencumbered funds in an amount which equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount which will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

(b) Notwithstanding any other provision of law, if at the end of any fiscal year, the California State Board of Architectural Examiners, the Board of Behavioral Science Examiners, the Board of Examiners in Veterinary Medicine, the Certified Shorthand Reporters Board, the Board of Medical Quality Assurance, the Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California, the Bureau of Collection and Investigative Services has unencumbered funds in an amount which equals or is more than the agency's operating budget for the next two fiscal

years, the agency shall reduce license or other fees, whether such license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount which will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

SEC. 4. Section 130 of the Business and Professions Code is amended to read:

130. (a) Notwithstanding any other provision of law, the term of office of any member of an agency designated in subdivision (b) shall be for a term of four years expiring on June 1st.

(b) Subdivision (a) applies to the following boards or committees:

(1) Board of Medical Quality Assurance of the State of California

(2) California Board of Podiatric Medicine

(3) Physical Therapy Examining Committee

(4) Board of Registered Nursing

(5) Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California

(6) State Board of Optometry

(7) California State Board of Pharmacy

(8) Board of Examiners in Veterinary Medicine

(9) California State Board of Architectural Examiners

(10) California State Board of Landscape Architects

(11) State Board of Barber Examiners

(12) State Board of Registration for Professional Engineers and Land Surveyors

(13) Contractors' State License Board

(14) State Board of Cosmetology

(15) State Board of Guide Dogs for the Blind

(16) State Board of Funeral Directors and Embalmers

(17) Board of Behavioral Science Examiners

(18) Structural Pest Control Board

(19) Cemetery Board

(20) Bureau of Electronic and Appliance Repair Advisory Board

(21) Certified Shorthand Reporters Board

(22) State Board of Registration for Geologists and Geophysicists

(23) State Athletic Commission

(24) California Advisory Board to the Bureau of Employment Agencies

(25) Board of Osteopathic Examiners of the State of California.

SEC. 5. Section 131 of the Business and Professions Code is amended to read:

131. Notwithstanding any other provision of law, no member of an agency designated in subdivision (b) of Section 130 or member of a board, commission, committee, or similarly constituted agency in the department shall serve more than two consecutive full terms.

SEC. 6. Section 164 of the Business and Professions Code is amended to read:

164. The form and content of any license, certificate, permit, or

similar indicia of authority issued by any agency in the department, including any document evidencing renewal of a license, certificate, permit, or similar indicia of authority, shall be determined by the director after consultation with and consideration of the views of the agency concerned.

SEC. 7. Section 205 of the Business and Professions Code is repealed.

SEC. 8. Section 483 of the Business and Professions Code is amended and renumbered to read:

154.5. If a person, not a regular employee of a board under this code, including the Board of Chiropractic Examiners and the Board of Osteopathic Examiners, is hired or under contract to provide expertise to the board in the evaluation of an applicant or the conduct of a licensee, and that person is named as a defendant in a civil action arising out of the evaluation or any opinions rendered, statements made, or testimony given to the board or its representatives, the board shall provide for representation required to defend the defendant in that civil action. The board shall not be liable for any judgment rendered against the person. The Attorney General shall be utilized in the action and his or her services shall be a charge against the board.

SEC. 9. Section 2660.5 of the Business and Professions Code is repealed.

SEC. 10. Section 2732.1 of the Business and Professions Code is amended to read:

2732.1. (a) An applicant for license by examination shall submit a written application in the form prescribed by the board.

Upon approval of the application, the board may issue an interim permit authorizing the applicant to practice nursing pending the results of the first licensing examination following completion of his nursing course.

If the applicant passes the examination, the interim permit shall remain in effect until a regular renewable license is issued by the board. If the applicant fails the examination, the interim permit shall terminate upon notice thereof by certified mail, return receipt requested, or if the applicant fails to receive the notice, upon the date specified in the interim permit.

(b) The board upon written application may issue a license without examination to any applicant who is licensed or registered as a nurse in a state, district or territory of the United States or Canada having, in the opinion of the board, requirements for licensing or registration equal to or higher than those in California, if he has passed an examination for the license or registration that is, in the board's opinion, comparable to the board's examination, and if he or she meets all the other requirements set forth in Section 2736.

(c) Each application shall be accompanied by the fee prescribed by this chapter for the filing of an application for a regular renewable license.

The interim permit shall terminate upon notice thereof by

certified mail, return receipt requested, if it is issued by mistake or if the application for permanent licensure is denied.

SEC. 11. Section 2733 of the Business and Professions Code is amended to read:

2733. (a) Upon approval of an application filed pursuant to subdivision (b) of Section 2732.1 and upon the payment of the fee prescribed by such section, the board may issue a temporary license to practice professional nursing for a period of six months from the date of issuance.

A temporary license shall be terminate upon notice thereof by certified mail, return receipt requested, if it is issued by mistake or if the application for permanent licensure is denied.

(b) Upon written application, the board may reissue a temporary license to any person who has applied for a regular renewable license pursuant to subdivision (b) of Section 2732.1 and who, in the judgment of the board has been excusably delayed in completing his or her application for or the minimum requirements for a regular renewable license, but the board may not reissue a temporary license more than twice to any one person.

SEC. 12. Section 2741 of the Business and Professions Code is amended to read:

2741. An applicant who fails to pass the examination may be reexamined within that period of time as the board, by regulation, deems appropriate upon payment of the fees prescribed by this chapter.

SEC. 13. Section 2742 of the Business and Professions Code is amended to read:

2742. The board shall issue a license to each applicant who passes the examination and meets all other licensing requirements. The form of the license shall be determined in accordance with Section 164.

SEC. 14. Section 2746.6 of the Business and Professions Code is amended to read:

2746.6. The board may take disciplinary action against a person possessing a certificate as a nurse-midwife for:

(a) Unprofessional conduct, which includes but is not limited to the following:

(1) Incompetence, or gross negligence in carrying out the usual functions of a nurse-midwife.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event the record of conviction shall be conclusive evidence thereof.

(3) The use of advertising relating to nursing which violates Section 17500.

(b) Procuring his or her certificate by fraud, misrepresentation, or mistake.

(c) Procuring, or aiding, or abetting, or attempting, or agreeing, or offering to procure or assist at a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or

assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter.

(e) Making or giving any false statement or information in connection with the application for issuance of a license.

(f) Conviction of a crime substantially related to the qualifications, functions and duties of a nurse-midwife.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a license or a certificate.

(h) Impersonating another licensed practitioner, or permitting or allowing another person to use his or her license or certificate for the purpose of nursing the sick or afflicted.

(i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 12 (commencing with Section 2221) of Chapter 5.

(j) Commission of any act coming within the scope of Section 2762.

SEC. 15. Section 2761 of the Business and Professions Code is amended to read:

2761. The board may take disciplinary action against a certified or licensed nurse or an applicant for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual nursing functions or nurse anesthetist functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event the record of conviction shall be conclusive evidence thereof.

(3) The use of advertising relating to nursing which violates Section 17500.

(b) Procuring his or her certificate by fraud, misrepresentation, or mistake.

(c) Procuring, or aiding, or abetting, or attempting, or agreeing, or offering to procure or assist at a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or regulations adopted pursuant to it.

(e) Making or giving any false statement or information in connection with the application for issuance of a license.

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a license.

(h) Impersonating another licensed practitioner, or permitting or allowing another person to use his or her certificate for the purpose of nursing the sick or afflicted.

(i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of, or arranging for, a violation of any of the provisions of Article 12 (commencing with Section 2221) of Chapter 5.

(j) Holding oneself out to the public or to any practitioner of the healing arts as a "nurse practitioner" or as meeting the standards established by the board for a nurse practitioner unless meeting the standards established by the board pursuant to Article 8 (commencing with Section 2834).

(k) Revocation or suspension of a license to practice nursing by another state or territory of the United States for any act or omission which would constitute grounds for the revocation or suspension of a license in this state.

SEC. 16. Section 5061 is added to the Business and Professions Code, to read:

5061. No person engaged in the practice of public accountancy shall pay a commission to obtain a client, nor shall that person accept a commission for a referral to a client of products or services of others. This section shall not prohibit payments for the purchase of an accounting practice or retirement payments to individuals presently or formerly engaged in the practice of public accounting or payments to their heirs or estates.

SEC. 17. Section 6980.10 of the Business and Professions Code is amended to read:

6980.10. On and after April 1, 1988, it is unlawful for any person to practice as a locksmith without first obtaining a permit from the bureau.

SEC. 18. Section 7500.1 of the Business and Professions Code is amended to read:

7500.1. The following terms as used in this chapter have the meaning expressed in this section.

(a) "Person" includes any individual, partnership, or corporation.

(b) "Department" means the Department of Consumer Affairs.

(c) "Director" means the Director of Consumer Affairs.

(d) "Bureau" means the Bureau of Collection and Investigative Services.

(e) "Chief" means the Chief of the Bureau of Collection and Investigative Services.

(f) "Licensee" means an individual, partnership, or corporation licensed under this chapter as a repossession agency.

(g) "Qualified certificate holder" or "qualified manager" is a person who possesses a valid qualification certificate in accordance with the provisions of Article 5 (commencing with Section 7504) and is in active control or management of, and who is a director of, the licensee's place of business.

(h) "Employee" means a person registered under this chapter.

(i) "Services" means any duty or labor to be rendered by one person for another.

(j) "Dangerous drugs" means any controlled substances as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(k) "Deadly weapon" means and includes any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, dirk, dagger, pistol, or revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club.

(*l*) "Combustibles" means any substance or article that is capable of undergoing combustion or catching fire, or that is flammable, if retained.

(m) "Health hazard" means any personal effects which if retained would produce an unsanitary or unhealthful condition.

(n) "Advertisement" means any written or printed communication, including a directory listing, except a free telephone directory listing which does not allow space for a license number.

(o) "Assignment" means an authorization by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, personal property, including, but not limited to, personal property registered under the Vehicle Code which has been sold under a security agreement that contains a repossession clause.

(p) "Security agreement" means an obligation, pledge, mortgage, chattel mortgage, lease agreement, deposit, or lien, given by a debtor as security for payment or performance of his or her debt, by furnishing the creditor with a recourse to be used in case of failure in the principal obligation.

(q) "Legal owner" means a person holding a security interest in personal property which has been sold, leased, or rented under a security agreement.

(r) "Private building" means and includes any dwelling, outbuilding, or other enclosed structure.

(s) "Secured area" means and includes any fenced and locked area.

(t) "Violent act" means any act which results in bodily harm or injury to any party involved.

(u) "Personal property" means any vehicle, boat, recreational vehicle, motor home, appliance, or other property which has been sold under a security agreement.

(v) "Personal effects" means any property contained within repossessed personal property which is not the property of the legal owner.

SEC. 19. Section 7507.9 of the Business and Professions Code is amended to read:

7507.9. If personal effects or other personal property, not covered by a security agreement, are contained in or on personal property at

the time it is recovered, the effects shall be removed from the vehicle, a complete and accurate inventory shall be made, and the personal effects shall be stored in a labeled container by the licensee for a minimum of 60 days in a secure manner, except those personal effects removed by or in the presence of the registered owner at the time the personal property was being repossessed.

(a) The date and time the inventory is made shall be indicated and shall be signed by the repossession agency employee who performs the inventory.

(b) The following items of personal effects are items determined to present a danger or health hazard when recovered by the licensee and shall be disposed of in the following manner:

(1) Deadly weapons and dangerous drugs shall be turned over to a local law enforcement agency for retention. These items shall be entered on the inventory and a notation shall be made as to the date and the time and the place the deadly weapon or dangerous drug was turned over to the law enforcement agency, and a receipt from the law enforcement agency shall be maintained in the records of the repossession agency.

(2) Combustibles shall be inventoried and noted as "disposed of, dangerous combustible," and the item shall be disposed of in a reasonable and safe manner.

(3) Food and other health hazard items shall be inventoried and noted as "disposed of, health hazard," and disposed of in a reasonable and safe manner.

(c) Personal effects may be disposed of after being held for at least 60 days. The inventory, and adequate information as to how, when, and to whom the personal effects were disposed of, shall be filed in the permanent records of the licensee.

(d) The inventory shall include the name, address, business hours, and phone number of the person at the repossession agency to contact for recovering the personal effects and an itemization of all personal effect storage charges that will be made by the repossession agency. The inventory shall also include the following statement: "Please be advised that the property listed on this inventory will be disposed of by the repossession agency after being held for 60 days from the date of this notice IF UNCLAIMED."

(e) The inventory shall be provided to a consumer not later than 48 hours after the recovery of personal property, except that if:

(1) The 48-hour period encompasses a Saturday, Sunday, or postal holiday, the inventory shall be provided no later than 72 hours after the recovery of personal property.

(2) Inventory resulting from repossession of a yacht, motor home, or travel trailer is such that it shall take at least eight hours to inventory, then the inventory shall be provided no later than 96 hours after the recovery of personal property. When the 96-hour period encompasses a Saturday, Sunday, or postal holiday, the inventory shall be provided no later than 120 hours after the recovery of personal property.

(f) The notice may be given by regular mail addressed to the last known address of the consumer or by personal service at the option of the repossession agency.

SEC. 20. Section 9941 of the Business and Professions Code is amended to read:

9941. (a) The bureau shall issue two types of licenses:

(1) An employment agency license.

(2) An interim employment agency license.

(b) The bureau may, when issuing a license under this chapter, restrict the type of employment agency business which may be conducted under the license to one or more of the following categories:

(1) General. This category authorizes the licensee to engage in the business of finding all types of employment for others and charging a fee to either applicants or employers or both applicants and employers for that service where the fee is not required to be paid in advance of, or concurrent with, the rendering of services.

(2) Babysitting. This category authorizes the licensee to engage exclusively in the business of providing babysitting employment for others.

(3) Domestic. This category authorizes the licensee to engage exclusively in the business of procuring domestic employment for others.

(4) Modeling. This category authorizes the licensee to engage exclusively in the business of procuring modeling employment for others.

(5) Farm labor. This category authorizes the licensee to engage exclusively in the business of procuring farm labor employment for others.

(6) Employer retained. Effective January 1, 1991, this category authorizes the licensee to engage in the business of finding all types of employment for others, except domestic employment, while charging fees exclusively to employers for that service.

(7) Nurses' registry. This category authorizes the licensee to engage exclusively in the business of a nurses' registry.

(8) Employment counseling. This category authorizes the licensee to engage exclusively in the business of an employment counseling service, as defined in Section 9909.5.

(9) Prepaid computer employment agency. This category authorizes the licensee to engage in the business of a prepaid computer employment agency, as defined in Section 9989.

(10) Job listing service. This category authorizes the licensee to engage in the business of a job listing service, as defined in Section 9989.

(c) On or before March 31, 1988, all persons holding a current and valid general employment agency license who operate an employment counseling service, a prepaid computer employment agency, or a job listing service shall be issued, upon application to the bureau, the appropriate employment agency license to operate that

business. Licensure fees shall be considered paid for the extent of the term for which the person has paid current license fees.

(d) In restricting the license to one or more of these categories, the bureau shall consider all of the following:

(1) The applicant's experience.

(2) The type of employment agency business which the applicant proposes to conduct.

SEC. 21. Section 9946 of the Business and Professions Code is amended to read:

9946. No employment agency license shall be issued until an applicant named in subdivision (a) of Section 9942 shall have successfully passed a qualifying examination. The applicant shall pass a general employment agency examination if he or she is seeking a license in any of the categories provided for in Section 9941 except for the nurses' registry or employment counseling categories. If he or she is seeking a license in the nurses' registry or employment counseling category, he or she shall pass only an examination designed to test his or her ability, knowledge, and proficiency to conduct or manage an employment agency in the respective category for which he or she is seeking a license.

SEC. 22. Section 19210 of the Business and Professions Code is amended to read:

19210. After a hearing, a license may be suspended, revoked, reprimanded, or placed on probation for a violation of any of the provisions of this chapter or of the rules and regulations of the bureau, or for a violation of Article 1 (commencing with Section 17500) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to false or misleading advertising; provided, however, that the license of a wholesaler or retailer shall not be suspended in the absence of a finding that the wholesaler or retailer knowingly offered for sale or sold articles not conforming to the requirements of this chapter or the rules and regulations of the bureau.

In any order of suspension or revocation, the bureau may impose conditions relative to the disposition of articles not conforming to the requirements of this chapter or the rules and regulations of the bureau, or may impose conditions relative to the completion or fulfillment of any orders or contracts entered into prior to the date of the hearing.

SEC. 23. Section 44052 of the Health and Safety Code, as added by Chapter 951 of the Statutes of 1986, is amended and renumbered to read:

44059. The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

SEC. 24. No reimbursement is required by this act pursuant to

Section 6 of Article XIII B of the California Constitution because the only costs 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 851

An act to amend Section 13009 of, and to add Section 633 to, the Unemployment Insurance Code, relating to employment.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 633 is added to the Unemployment Insurance Code, to read:

633. (a) For purposes of coverage under Part 2 (commencing with Section 2601) of Division 1, "employment" does not include services performed as an intermittent or adjunct instructor at a postsecondary educational institution which meets the requirements of Section 94310.1 or 94310.2 of the Education Code if the intermittent or adjunct instructor and the employing unit enter a written contract with the following provisions:

(1) That any federal or state income tax liability shall be the responsibility of the party providing the services.

(2) That no disability insurance coverage is provided under the contract.

(3) That the party performing the services certifies that he or she is doing so as a secondary occupation or as a supplemental source of income.

(b) This section shall not apply to services performed under a collective bargaining agreement.

SEC. 2. Section 13009 of the Unemployment Insurance Code is amended to read:

13009. "Wages" means all remuneration, other than fees paid to a public official, for services performed by an employee for his or her employer, including all remuneration paid to a nonresident employee for services performed in this state, and the cash value of all remuneration paid in any medium other than cash, except as provided by this section. "Wages" includes tips received by an employee in the course of his or her employment. The wages shall be deemed to be paid at the time a written statement including tips is furnished to the employer pursuant to Section 13055 or, if no statement including those tips is so furnished, at the time received.

"Wages" shall not include remuneration paid under any of the following conditions:

(a) For agricultural labor, as defined in subdivision (g) of Section 3121 of the Internal Revenue Code.

(b) For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

(c) For service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for that service is fifty dollars ($50) or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subdivision, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if either of the following conditions is met:

(1) On each of some 24 days during the quarter, the individual performs for the employer for some portion of the day service not in the course of the employer's trade or business.

(2) The individual was regularly employed, as determined under paragraph (1), by the employer in the performance of the service during the preceding calendar quarter.

(d) For services by a citizen or resident of the United States for a foreign government or an international organization.

(e) For services performed by a nonresident alien individual as designated by regulations prescribed by the department.

(f) For services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order.

(g) (1) For services performed by an individual under the age of 18 in delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

(2) For services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him or her at a fixed price, his or her compensation being based on the retention of the excess of the price over the amount at which the newspapers or magazines are charged to him or her whether or not he or she is guaranteed a minimum amount of compensation for the services, or is entitled to be credited with the unsold newspapers or magazines turned back.

(h) For services not in the course of the employer's trade or business, to the extent paid in any medium other than cash.

(i) To, or on behalf of, an employee or his or her beneficiary under any of the following situations:

(1) From or to a trust which is exempt from tax under Section 17631 of the Revenue and Taxation Code at the time of payment, unless the payment is made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust.

(2) Under or to an annuity plan which, at the time of payment, is

a plan qualified pursuant to Chapter 5 (commencing with Section 17501) of Part 10 of Division 2 of the Revenue and Taxation Code.

(3) Under or to a bond purchase plan which, at the time of payment, is a bond purchase plan qualified pursuant to Chapter 5 (commencing with Section 17501) of Part 10 of Division 2 of the Revenue and Taxation Code.

(4) For a payment which qualifies for deduction by an employee pursuant to Section 17272 of the Revenue and Taxation Code if, at the time of payment, it is reasonable to believe that the employee will be entitled to a deduction under that section for payment.

(j) To a master, officer, or any other seaman who is a member of a crew on a vessel engaged in foreign, coastwise, intercoastal, interstate, or noncontiguous trade.

(k) Pursuant to any provision of law other than Section 5(c) or 6(*l*) of the Peace Corps Act, for service performed as a volunteer or volunteer leader within the meaning of that act.

(*l*) In the form of group-term life insurance on the life of an employee.

(m) To or on behalf of an employee, and to the extent that, at the time of the payment of remuneration it is reasonable to believe that a corresponding deduction is allowable for moving expenses pursuant to Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 of Division 2 of the Revenue and Taxation Code.

(n) (1) As tips in any medium other than cash.

(2) As cash tips to an employee in any calendar month in the course of his or her employment by an employer, unless the amount of the cash tips is twenty dollars ($20) or more.

(o) For service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of the boat pursuant to which all of the following apply:

(1) The individual does not receive any cash remuneration, other than as provided in paragraph (2).

(2) The individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of the catch.

(3) The amount of the individual's share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life.

This subdivision shall apply only where the operating crew of the boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals.

(p) For any medical care reimbursement made to, or for the benefit of, an employee under a self-insured medical reimbursement plan pursuant to Section 105(h)(6) of the Internal Revenue Code.

(q) To, or on behalf of, an employee to the extent not includable

in gross income pursuant to Section 13006.

(r) For services to which Section 633 applies.

CHAPTER 852

An act to amend Sections 40200.2, 40215, 40220, 40230, and 40519 of, to add Section 40200.7 to, and to repeal Section 40219 of, the Vehicle Code, relating to vehicle parking violations.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 40200.2 of the Vehicle Code is amended to read:

40200.2. (a) If a county or a court within a county has been processing notices of parking violations and notices of delinquent parking violations for a city, a district, or any other issuing agency prior to January 1, 1987, the court shall continue to process those notices unless the court elects to discontinue that processing.

(b) If a court continues to process notices of parking violations and notices of delinquent parking violations pursuant to subdivision (a), for purposes of this article, excepting Sections 40203.5, 40205, 40211, 40215, 40219, 40220, 40221, 40226, and 40230, and subdivision (d) of Section 40206.5, "processing agency" means that court.

SEC. 2. Section 40200.7 is added to the Vehicle Code, to read:

40200.7. If a person appears to contest a notice of parking violation or a notice of delinquent parking violation, the processing agency shall obtain the person's signed written promise to appear which shall be filed with the court at the time a complaint is filed.

SEC. 3. Section 40215 of the Vehicle Code is amended to read:

40215. (a) If the person served with a notice of parking violation or a notice of delinquent parking violation appears before the person authorized to receive a deposit of the parking penalty and contests the violation, the processing agency shall do either of the following:

(1) If the processing agency is satisfied that the violation did not occur or that the registered owner was not responsible for the violation, the processing agency shall cancel the notice of parking violation or notice of delinquent parking violation and make an adequate record of the reasons for canceling the notice.

(2) The processing agency shall set an arraignment date, or, if the person requests it, a trial date, and provide documentation to the court as specified by local court rule. Except as the rules provide otherwise, the processing agency shall record the person's name, address, and driver's license number, obtain the person's signed, written promise to appear, and verify whether the person appearing has received a notice of parking violation conforming to Section

40202 or a notice of delinquent parking violation conforming to Sections 40207 and 40208. If the person appearing has not received the notice of delinquent parking violation, the processing agency shall serve the person with a notice of delinquent parking violation conforming to Sections 40207 and 40208. The processing agency shall assign a specific date and time as approved by the court for appearance by the person contesting the violation and shall then file a complaint or a copy of the notice of delinquent parking violation, together with the signed promise to appear, with the court pursuant to Section 40230 within 15 days. The processing agency shall notify the registered owner or other person contesting the violation of the filing and the date and time for appearance in the same manner as provided in Section 40206. Thereafter, all proceedings shall be had by the court in the same manner as infraction violations of this code.

(b) If the processing agency has filed the notice of delinquent parking violation with the department for collection pursuant to Section 40220, the processing agency shall recall the notice by notifying the department that the notice of delinquent parking violation has been filed with the court and informing the department of the court file or docket number of the matter.

SEC. 4. Section 40219 of the Vehicle Code is repealed.

SEC. 5. Section 40220 of the Vehicle Code is amended to read:

40220. Except as provided in Section 40222, the processing agency shall elect to proceed under one and only one of the following options:

(a) Cancel the notice of delinquent parking violation and make an adequate record of the reasons for canceling the notice, in which case no further proceedings shall occur.

(b) File an itemization of unpaid parking penalties, including administrative fees, and the amount of the costs of the processing agency for costs of service, with the department for collection with the registration of the vehicle pursuant to Section 4760.

(c) File a complaint with the court, together with supporting documents and other evidence, pursuant to Section 40230.

SEC. 6. Section 40230 of the Vehicle Code is amended to read:

40230. (a) A complaint pursuant to Section 40206.5, 40209, 40210, 40215, or 40223, shall be filed with the court within 15 days after the defendant requests a court hearing or fails to appear.

(b) If the notice is prepared in the form approved by the Judicial Council, the processing agency may, in lieu of a complaint, file a copy of the notice of delinquent parking violation issued for service under Section 40206, and a copy of the affidavit of service or of the promise to appear. That notice shall serve as a complaint on which a warrant may issue.

(c) After the filing of a complaint or notice of delinquent parking violation under this section, the court shall exercise all further jurisdiction over the violation. Any fines or forfeitures collected by the court, after filing of a complaint, shall be collected, deposited, and disbursed as are fines and forfeitures in other prosecutions of

violations of this code.

SEC. 7. Section 40519 of the Vehicle Code is amended to read:

40519. (a) Any person who has received a written notice to appear for an infraction may, prior to the time at which the person is required to appear, make a deposit and declare the intention to plead not guilty to the clerk of the court named in the notice to appear. The deposit shall be in the amount of bail established pursuant to Section 1269b of the Penal Code, together with any assessment required by Section 42006 of this code or Section 1464 of the Penal Code, for the offense charged, and shall be used for the purpose of guaranteeing the appearance of the defendant at the time and place scheduled by the clerk for arraignment and for trial, and to apply toward the payment of any fine or assessment prescribed by the court in the event of conviction. The case shall thereupon be set for arraignment and trial on the same date, unless the defendant requests separate arraignment.

(b) Any person who has received a written notice to appear or a notice of delinquent parking violation issued under Section 40206 for an infraction may, prior to the time at which the person is required to appear, plead not guilty in writing in lieu of appearing in person. The written plea shall be directed to the court named in the notice to appear or to the court or city agency indicated on the notice of parking violation and, if mailed, shall be sent by certified or registered mail postmarked not later than five days prior to the day upon which appearance is required. The written plea and request to the court or city agency shall be accompanied by a deposit consisting of the amount of bail established pursuant to Section 1269b of the Penal Code, together with any assessment required by Section 42006 of this code or Section 1464 of the Penal Code, for that offense, which amount shall be used for the purpose of guaranteeing the appearance of the defendant at the time and place set by the court for trial and to apply toward the payment of any fine or assessment prescribed by the court in the event of conviction. Upon receipt of the plea and deposit, the case shall be set for arraignment and trial on the same date, unless the defendant requests separate arraignment. Thereafter, the case shall be conducted in the same manner as if the defendant had appeared in person, had made his or her plea in open court, and had deposited that sum as bail. The court or the clerk of the court shall notify the accused of the time and place of trial by first-class mail postmarked at least 10 days prior to the time set for the trial. Any person using this procedure shall be deemed to have waived the right to be tried within the statutory period.

(c) Any person using the procedure set forth in subdivision (a) or (b) shall be deemed to have given a written promise to appear at the time designated by the court for trial, and failure to appear at the trial shall constitute a misdemeanor.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local

agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 853

An act to amend Sections 13600 and 13601 of the Penal Code, relating to peace officer training.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 13600 of the Penal Code is amended to read:

13600. (a) The Legislature finds and declares that peace officers of the state correctional system, including youth and adult correctional facilities, have a role in the criminal justice system that has previously been ignored in terms of creation and application of sound selection criteria for applicants and their training prior to assuming their duties. For the purposes of this section, correctional peace officers are peace officers as defined in Section 830.5 and employed by the Department of Corrections or the Department of the Youth Authority.

The Legislature further finds that sound applicant selection and training are essential to public safety and in carrying out the missions of the Youth and Correctional Agency in the custody and care of the state's offender population. The greater degree of professionalism which will result from sound screening criteria and a significant training curriculum will greatly aid the Youth and Adult Correctional Agency in maintaining smooth, efficient, and safe operations and effective programs in the Departments of Corrections and the Youth Authority.

(b) The Department of Corrections-Department of Youth Authority Joint Apprenticeship Committee, as referred to in the Memorandum of Understanding for Unit 6, in consultation with the Presley Institute, shall research, establish, and monitor standards for the selection and training of correctional peace officer apprentices. Any standard for selection established under this subdivision shall be subject to approval by the State Personnel Board. The Joint Apprenticeship Committee may disapprove any training courses created pursuant to the standards developed by the committee if it determines that the courses do not meet the prescribed standards.

SEC. 2. Section 13601 of the Penal Code is amended to read:

13601. The Joint Apprenticeship Committee, in consultation with

the Presley Institute, shall develop standards for advanced correctional peace officer and supervisory curricula. Those standards shall be approved by both a majority of the management representatives and a majority of the Unit 6 representatives to the Joint Apprenticeship Committee. Upon approval, the standards shall be effective as soon as practicable after funding is made available through the state budget process. When a correctional peace officer is promoted, he or she shall be required to complete these secondary training experiences as a prerequisite to successful passage of probation.

The Joint Apprenticeship Committee shall develop standards for the training of correctional peace officers in the handling of stress associated with their duties. The Joint Apprenticeship Committee may disapprove any training courses created pursuant to the standards developed by the committee if it determines that the courses do not meet the prescribed standards.

CHAPTER 854

An act to add Section 463.5 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 463.5 is added to the Public Utilities Code, to read:

463.5. (a) Section 463 does not require the commission to undertake a reasonableness review of recorded costs to determine the reasonableness of the costs of each item of any electrical or gas corporation's plant which costs, or is estimated to have cost, more than fifty million dollars ($50,000,000) where the commission either has established a maximum reasonable cost pursuant to Section 1005.5 or has adopted an estimate of the reasonable costs in any proceeding.

The establishment of the maximum costs or adoption of an estimated cost does not limit or restrict the discretion of the commission in considering the reasonableness of plant-related costs in subsequent proceedings.

(b) This section shall become operative January 1, 1989.

SEC. 2. The Legislature hereby finds and declares that in order not to influence or affect the outcome of any litigation pending on January 1, 1987, this act delays the operative date of Section 463.5 of the Public Utilities Code to January 1, 1989.

CHAPTER 855

An act to amend Sections 322, 1094, 1095, and 2714 of the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 322 of the Unemployment Insurance Code is amended to read:

322. The department may exchange information with other governmental departments and agencies, both federal and state, which are concerned with the administration of unemployment insurance, or the collection of taxes which may be used to finance the administration of unemployment insurance, or the relief of unemployed or destitute individuals, or legislation concerning, regulating, or in any manner affecting the obligations arising out of an employer-employee relation, and with other departments or agencies of government as the department deems necessary or desirable for the proper administration of this division in accordance with authorized regulations.

SEC. 2. Section 1094 of the Unemployment Insurance Code is amended to read:

1094. Except as otherwise specifically provided in this code, the information obtained in the administration of this code shall be for the exclusive use and information of the director in discharge of his or her duties and shall not be open to the public, nor admissible in evidence in any action or special proceeding, other than one arising out of the provisions of this code, one arising out of the provisions of Division 9 (commencing with Section 10000) of the Welfare and Institutions Code to determine entitlement to, and directly connected with and limited to the administration of, public social services, or a proceeding to determine entitlement to, and directly connected with and limited to the administration of, locally provided general relief or assistance benefits or medical assistance services. This information may be tabulated and published in statistical form for the use and information of state departments and the public, except that the name of the employing unit or of any worker shall never be divulged in the course of the tabulation or publication.

SEC. 3. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes:

(a) To properly present a claim for benefits.

(b) To acquaint a worker or his or her authorized agent with his

or her existing or prospective right to benefits.

(c) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000). This subdivision, as it relates to Division 3 (commencing with Section 9000), applies only to subdivision (j) of this section.

(d) To enable an employer to receive a reduction in contribution rate.

(e) To enable the Director of Social Services or his or her representatives or the State Director of Health Services or his or her representatives, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to the Welfare and Institutions Code, and directly connected with, and limited to, the administration of public social services.

(f) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(g) To enable county district attorneys, or their representatives, to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(h) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(i) To enable county departments of collection or their representatives to determine entitlement to medical assistance services rendered pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code, and, when appropriate, to enable collection for the county's expenditures for these medical assistance services.

(j) To furnish an employer, or his or her authorized agent, with information including, but not limited to, the applicant's or recipient's name, social security number, address, employable skills, and job placement in order to enable him or her to fully discharge his or her obligations or safeguard his or her rights under the elements of a joint union, management, and Employment Development Department agreement as are deemed necessary to assist displaced workers to obtain new employment under the provisions of Chapter 2.9 (commencing with Section 9970) of Part 1 of Division 3 and related provisions of Division 3 (commencing with Section 9000). The information shall be limited to any information gathered under these divisions by the department and authorized for release by the labor organization which shall act as an agent for the affected workers under terms of the agreement and shall participate in defining the information release provisions.

(k) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code and designated by the head of the law enforcement agency and who requests this information in the course of and as a part of an investigation into the commission of a crime where there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency. Any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(1) This subdivision shall not be construed to authorize the release of a general list identifying individuals applying for or receiving benefits to any law enforcement agency.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(*l*) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(m) To provide the State Teachers' Retirement System, pursuant to Section 23910.3 of the Education Code, with information relating to the earnings of any person who is receiving a disability allowance from the State Teachers' Retirement System. The earnings information shall be released to the Teachers' Retirement Board only upon written request from the board specifying that the person is receiving a disability allowance from the system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the

chief executive officer in writing.

(n) To provide the Public Employees' Retirement System, pursuant to Section 20143 of the Government Code, with information relating to the earnings of any person who is receiving a disability retirement allowance from the Public Employees' Retirement System. The earnings information shall be released to the Board of Administration of the system only upon written request from the board specifying that the person is receiving a disability retirement allowance from the system. The request may be made by the executive officer of the system or by an employee of the system so authorized and identified by name and title by the executive officer in writing.

(o) To provide the University of California Retirement System with information in its possession relating to the earnings of any person who has applied for or is receiving disability income from the system. The earnings information shall be disclosed only upon written request from the system specifying that the person has applied for or is receiving disability income from the system. The request may be made by the chief administrative officer of the system or by an employee so authorized and identified by name and title by the chief administrative officer in writing. The system shall notify applicants for and recipients of disability income that earnings information from the department's records will be released upon the system's request. The information obtained pursuant to this subdivision shall be used or disclosed by the system only to determine or to verify entitlement to, or continuing eligibility for, disability income. The system shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(p) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code. The Division of Labor Standards Enforcement shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

SEC. 4. Section 2714 of the Unemployment Insurance Code is amended to read:

2714. (a) All medical records of the department obtained under this part, except to the extent necessary for the proper administration of this part or as provided herein, or to the extent necessary for the proper administration of public social services pursuant to the Welfare and Institutions Code, shall be confidential and shall not be published or be open to public inspection in any manner revealing the identity of the claimant, or the nature or cause of his or her disability. These records are not admissible in evidence in any action or special proceeding other than one arising under this

division or one arising under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code to determine entitlement to, and directly connected with and limited to the administration of, public social services. The department may reveal its records to the Director of Social Services or his or her representatives, and may reveal the identity only of the claimant to the Department of Rehabilitation, but the information shall remain confidential and shall not be disclosed except as provided herein.

(b) The department shall, to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records, provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code and designated by the head of the law enforcement agency and who requests this information in the course of and a part of an investigation into the commission of a crime where there is a reasonable suspicion that the crime is a felony and that the information would lead to relevent evidence. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under normal procedures of that agency. Any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(c) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(d) This section shall not be construed to authorize the release of a general list identifying individuals applying for or receiving benefits to any law enforcement agency.

(e) The department shall maintain records pursuant to this section only for periods required under regulations or statutes enacted for the administration of its programs.

(f) This section shall become operative on January 1, 1988.

SEC. 5. The amendments made to Sections 2626.1 and 2626.2 of the Unemployment Insurance Code by Chapter 255 of the Statutes of 1987 shall apply to periods of disability commencing on or after January 1, 1988.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 856

An act to amend Section 1540.1 of, and to add Section 1569.405 to, the Health and Safety Code, relating to care facilities.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 1540.1 of the Health and Safety Code is amended to read:

1540.1. Upon a finding by the licensing authority that a facility is in operation without a license, a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may enforce Section 1503.5, or Section 1508, or both sections by utilizing the procedures set forth in Chapter 5 (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. A facility violating Section 1503.5 or 1508, or both, is guilty of an infraction punishable by a fine of two hundred dollars ($200) for each day of violation. Upon a determination that a community care facility is in violation of Section 1503.5 or 1508, or both, and after a citation has been issued, the peace officer shall immediately notify the licensing authority in the department.

SEC. 2. Section 1569.405 is added to the Health and Safety Code, to read:

1569.405. Upon a finding by the licensing authority that a facility is in operation without a license, a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may enforce Section 1569.10 by utilizing the procedures set forth in Chapter 5 (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. A facility violating Section 1569.10 is guilty of an infraction punishable by a fine of two hundred dollars ($200) for each day of violation. Upon a determination that a residential care facility for the elderly is in violation of Section 1569.10, and after a citation has been issued, the peace officer shall immediately notify the licensing authority in the department.

SEC. 3. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 857

An act to amend Section 429.72 of the Health and Safety Code, relating to health.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 429.72 of the Health and Safety Code is amended to read:

429.72. The office may designate experimental health manpower projects as approved projects where the projects are sponsored by community hospitals or clinics, nonprofit educational institutions, or government agencies engaged in health or education activities. Nothing in this section shall preclude approved projects from utilizing the offices of physicians, dentists, pharmacists, and other clinical settings as training sites.

CHAPTER 858

An act to amend Section 1250.9 of the Health and Safety Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 1250.9 of the Health and Safety Code is amended to read:

1250.9. (a) The Office of Statewide Health Planning and Development shall conduct a demonstration project to evaluate the accommodation of postsurgical care patients for periods not exceeding two days, except that the attending physician may require that the stay be extended to no more than three days.

(b) The demonstration project shall operate for a period not to exceed three years, for no more than eight project sites, one of which shall be located in Fresno County. Of the eight project sites, not more than two may be distinct parts of health facilities, and not more than six shall be physically freestanding from health facilities. Neither of the two project sites that are designated as distinct parts of health facilities, shall be located in the service area of any one of the six freestanding project sites. Neither of the two project sites that are designated as distinct parts of health facilities shall have a service area that overlaps with any one or more service areas of the six

freestanding pilot sites. For the purposes of this section, service area shall be defined by the office.

(c) (1) The office shall establish standards for participation, commensurate with the needs of postsurgical care patients requiring temporary nursing services following outpatient surgical procedures.

(2) In preparing the standards for participation, the office may, as appropriate, consult with the department and with a technical advisory committee which may be appointed by the Director of Statewide Health Planning and Development. The committee shall have no more than eight members, all of whom shall be experts in health care, as determined by the director. One of the members of the committee shall, as determined by the director, have specific expertise in the area of pediatric surgery and recovery care.

(3) If a technical advisory committee is established by the director, members of the committee shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of the committee.

(d) Not later than six months prior to the conclusion of the demonstration project, the office shall submit an evaluation of the demonstration project to the Legislature on the effectiveness and safety of the demonstration project in providing recovery services to patients receiving outpatient surgical services. The office, as part of the evaluation, shall include recommendations regarding the establishment of a new license category or amendment of existing licensing standards.

(e) The office shall establish and administer the demonstration project in facilities with no more than 20 beds which continuously meet the standards of skilled nursing facilities licensed under subdivision (c) of Section 1250, except that the office may, as appropriate and unless a danger to patients would be created, eliminate or modify the standards. This section shall not prohibit general acute care hospitals from participating in the demonstration project. The office may waive those building standards applicable to a project site which is a distinct part of a health facility which are inappropriate, as determined by the office, to the demonstration project. Notwithstanding health facility licensing regulations found in Division 5 (commencing with Section 70001) of Title 22 of the California Adminstrative Code, a project site which is a distinct part of a health facility shall comply with all standards for participation established by the office and with all regulations adopted by the office to implement this section. A project site which is a distinct part of a health facility shall not, for the duration of the pilot project, be subject to the provisions of Division 5 (commencing with Section 70001) of Title 22 of the California Administrative Code which conflict, as determined by the office, with the demonstration project standards or regulations.

(f) The department shall issue a facility identification number to each facility selected for participation in the demonstration project.

(g) Persons who wish to establish recovery care programs shall

make application to the office for inclusion in the pilot program. Applications shall be made on forms provided by the office and shall contain sufficient information determined as necessary by the office.

(h) As a condition of participation in the pilot program, each applicant shall agree to provide statistical data and patient information that the office deems necessary for effective evaluation. It is the intent of the Legislature that the office shall develop procedures to assure the confidentiality of patient information and shall only disclose patient information, including name identification, as is necessary pursuant to this section or any other law.

(i) Any authorized officer, employee, or agent of the office or the state department may, upon presentation of proper identification, enter and inspect any building or premises and any records, including patient records, of a pilot project participant at any reasonable time to review compliance with, or to prevent any violation of, this section or the regulations and standards adopted thereunder.

(j) The office may suspend or withdraw approval of any or all pilot projects with notice, but without hearing if it determines that patient safety is being jeopardized.

(k) The office may charge applicants and participants in the program a reasonable fee to cover its actual cost of administering the pilot program and the cost of any committee created under this section.

(*l*) The office may contract with a medical consultant or other advisors as necessary, as determined by the office. Due to the necessity to expedite the demonstration project and its extremely specialized nature, the contracts shall be exempt from the provisions of Section 10373 of the Public Contract Code, and shall be considered sole-source contracts.

(m) The office may adopt emergency regulations to implement this section in accordance with Section 11346.1 of the Government Code, except that the regulations shall be exempt from the requirements of subdivisions (e), (f), and (g) of that section. The regulations shall be deemed an emergency for the purposes of Section 11346.1.

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 postsurgical care demonstration project required by Section 1250.9 of the Health and Safety Code, as amended by Section 1 of this act is a limited term project which is currently being developed by the Office of Statewide Health Planning and Development. In order for the office to collect the level of fees necessary to pay for the cost of development, it is necessary that this act take effect immediately.

CHAPTER 859

An act to amend Section 10012 of, and to add Section 10012.3 to, the Elections Code, relating to elections.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 10012 of the Elections Code is amended to read:

10012. Each candidate for nonpartisan elective office in any local agency, including any city, county, city and county or district, may prepare a candidate's statement on an appropriate form provided by the clerk. The statement may include the name, age and occupation of the candidate and a brief description of no more than 200 words, of the candidate's education and qualifications expressed by the candidate himself or herself. However, the governing body of the local agency may authorize an increase in the limitations on words for the statement from 200 to 400 words. The statement shall not include the party affiliation of the candidate, nor membership or activity in partisan political organizations. The statement shall be filed in the office of the clerk when his or her nomination papers are returned for filing, if it is for a primary election, or for an election for offices for which there is no primary. The statement shall be filed in the office of the clerk no later than the 88th day before the election, if it is for an election for which nomination papers are not required to be filed. If a runoff election or general election occurs within 88 days of the primary or first election, the statement shall be filed with the clerk by the third day following the governing body's declaration of the results from the primary or first election. Except as provided in Section 10012.3, the statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5 p.m. of the next working day after the close of the nomination period.

The clerk shall send to each voter together with the sample ballot, a voter's pamphlet which contains the written statements of each candidate that is prepared pursuant to this section. The statement of each candidate shall be printed in type of uniform size and darkness, and with uniform spacing. The clerk shall provide a Spanish translation to those candidates who wish to have one, and shall select a person to provide that translation from the list of approved Spanish language translators and interpreters of the superior court of the county or from an institution accredited by the Western Association of Schools and Colleges.

The local agency may estimate the total cost of printing, handling, translating, and mailing the candidate's statements filed pursuant to this section, including costs incurred as a result of complying with the

Voting Rights Act of 1965, as amended, and may require each candidate filing a statement to pay in advance to the local agency his or her estimated pro rata share as a condition of having his or her statement included in the voter's pamphlet. In the event of underpayment, the clerk may require the candidate to pay the balance of the cost incurred. In the event of overpayment, the clerk shall prorate the excess amount among the candidates and refund the excess amount paid within 30 days of the election.

Nothing in this section shall be deemed to make any such statement or the authors thereof free or exempt from any civil or criminal action or penalty because of any false, slanderous or libelous statements offered for printing or contained in the voter's pamphlet.

Before the nominating period opens, the local agency for that election shall determine whether a charge shall be levied against that candidate for the candidate's statement sent to each voter. This decision shall not be revoked or modified after the seventh day prior to the opening of the nominating period. A written statement of the regulations with respect to charges for handling, packaging, and mailing shall be provided to each candidate or his or her representative at the time he or she picks up the nomination papers.

For purposes of this section, and Section 10012.5, the board of supervisors shall be deemed the governing body of judicial elections.

SEC. 2. Section 10012.3 is added to the Elections Code, to read:

10012.3. Notwithstanding Section 10012, if a candidate alleges to be indigent and unable to pay in advance the requisite fee for submitting a candidate statement, the candidate shall submit to the local agency a statement of financial worth to be used in determining whether or not he or she is eligible to submit a candidate statement without payment of the fee in advance.

The statement of financial worth shall be submitted by the candidate together with his or her candidate statement in accordance with the deadline specified in Section 10012. The statement of financial worth form shall be furnished by the local agency and may include questions relating to the candidate's employer, income, real estate holdings, tangible personal property, and financial obligations. The candidate shall certify the content of the statement as to its truth and correctness under penalty of perjury. The candidate shall also sign a release form of the candidate's most recent federal income tax report.

Upon receipt of a statement of financial worth, a determination shall be made by the local agency of whether or not the candidate is indigent and shall notify the candidate of its findings.

If it is determined that the candidate is not indigent the candidate shall within three days of the notification, excluding Saturdays, Sundays, and state holidays, withdraw the statement or pay the requisite fee. If the candidate fails to respond within the time prescribed, the local agency shall not be obligated to print and mail the statement.

If the local agency determines that the candidate is indigent the

local agency shall print and mail the statement.

Nothing in this section shall prohibit the clerk from billing the candidate his or her actual pro rata share of the cost after the election.

CHAPTER 860

An act to amend Section 21382.4 of, and to add Section 21386.5 to, the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 21382.4 of the Government Code is amended to read:

21382.4. (a) In lieu of benefits provided in Section 21382 or Section 21382.2, if the death benefit provided by Section 21361 is payable on account of a state member's death which occurs under circumstances other than those described in paragraph (5) of subdivision (a) of Section 21360, or if an allowance under Section 21365.5 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

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

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

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

(4) Each surviving parent of the member.

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

(1) A widow or a widower who was married to the member prior to the occurrence of the injury or onset of the illness which resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid seven hundred dollars ($700) per month if there is one such child, or eight hundred forty dollars ($840) per month if there are two or more such children. If there also

are such children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, which is in excess of three hundred fifty dollars ($350) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

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

(A) If there is only one child, the child shall be paid three hundred fifty dollars ($350) per month.

(B) If there are two children, the children shall be paid seven hundred dollars ($700) per month divided equally between them.

(C) If there are three or more children, the children shall be paid eight hundred forty dollars ($840) per month divided equally among them.

(3) A widow or a widower who has attained or attains the age of 62 years, and, with respect to both widow and widower, who was married to the member prior to the occurrence of the injury or onset of the illness which resulted in death and has not remarried subsequent to the member's death, shall be paid three hundred fifty dollars ($350) per month. No allowance shall be paid under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be one hundred forty dollars ($140) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies or remarries and there is no such surviving child, or if the surviving spouse dies or remarries and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 62 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid three hundred fifty dollars ($350) per month.

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

(d) This section shall apply to beneficiaries of state members whose death occurred before January 1, 1985. Where a surviving spouse attained age 62 prior to January 1, 1987, entitlement shall exist retroactive to January 1, 1985, or to his or her 62nd birthday, whichever is later. All assets and liabilities of all state agencies and their employees on account of benefits provided to beneficiaries specified in this subdivision shall be pooled into a single account. The board shall transfer from the reserve for 1959 survivor contributions retained in the retirement fund, an amount sufficient to pay the cost

of the increased benefits provided by this subdivision for beneficiaries of members who died on or before December 31, 1984.

(e) This section shall not apply to beneficiaries with respect to the death of a state member, except as provided in subdivision (i), occurring on or after January 1, 1985, unless provided for in a memorandum of understanding reached pursuant to Section 3517.5, or authorized by the Director of Personnel Administration for classifications of state employees who are excluded from, or not subject to, collective bargaining. The memorandum of understanding adopting this section shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature as provided by law.

(f) This section shall apply, with respect to benefits payable on and after January 1, 1985, to school members, except that it shall not apply, without contract amendment, with respect to safety members who became members after January 1, 1985. All assets and liabilities of all school employers, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of school members employed by a school employer.

(g) This section shall apply to members of a contracting agency which, by amending its contract, first elects effective on or after January 1, 1985, to make this article applicable to local members employed by the agency. On and after January 1, 1985, contracting agencies already subject to Section 21382 or Section 21382.2 may elect by contract amendment to be subject to this section. All assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency which is subject to this section.

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

(i) This section shall not apply to beneficiaries with respect to the death of a state member employed by the California State University occurring on or after January 1, 1988, unless provided for in a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, or

authorized by the Trustees of the California State University for employees excluded from collective bargaining. The memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 2. Section 21386.5 is added to the Government Code, to read:

21386.5. Notwithstanding any other provision of this article, if so agreed to in a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, as it pertains to represented employees of the California State University, the employer may pay, in addition to the employer contributions, all or a portion of the employee contributions required for the benefit payable pursuant to Section 21382.4 or the employees may pay, in addition to the employee contributions, all or a portion of the employer contributions required for the benefit payable pursuant to Section 21382.4.

CHAPTER 861

An act to amend Section 10471.1 of the Business and Professions Code, relating to real estate licenses.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 10471.1 of the Business and Professions Code is amended to read:

10471.1. (a) The claimant shall serve a copy of the notice prescribed in subdivision (c) upon the judgment debtor by personal service or by registered mail, together with a copy of the application.

(b) If the judgment debtor holds a current license issued by the department, service of the notice and a copy of the application may be made by registered mail addressed to the judgment debtor at the latest business or residence address on file with the department. If the judgment debtor does not hold a current license issued by the department and personal service cannot be effected through the exercise of reasonable diligence, the claimant shall serve the judgment debtor by one publication of the notice in each of two successive weeks in a newspaper of general circulation published in the county in which the judgment debtor was last known to reside.

(c) The notice served upon the judgment debtor shall include the following statment:

"NOTICE: Based upon a judgment entered against you in favor of _____, application for
(name of claimant)
payment from the Recovery Account of the Real Estate Fund is being made to the Department of Real Estate.

"If payment is made from the Recovery Account, all licenses and license rights that you have under the Real Estate Law will be automatically suspended on the date of payment and cannot be reinstated until the Recovery Account has been reimbursed for the amount paid plus interest at the prevailing rate.

"If you wish to contest payment by the Real Estate Commissioner, you must file a written response to the application addressed to the Department of Real Estate at _____ within 30 days after mailing, delivery, or publication of this notice and send a copy of that response to the claimant. If you fail to do so, you will have waived your right to present your objections to payment."

(d) If a judgment debtor fails to file a written response to the application with the department within 30 days after personal service, mailing, or final publication of the notice, the judgment debtor shall not thereafter be entitled to notice of any action taken or proposed to be taken by the commissioner with respect to the claim.

CHAPTER 862

An act to amend Section 10203.5 of the Insurance Code, relating to insurance.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 10203.5 of the Insurance Code is amended to read:

10203.5. (a) Life insurance conforming to all the following conditions is another form of group life insurance:

(1) Covering one of the following groups:

(A) All members are or become borrowers from one financial institution, including subsidiary or affiliated persons, under an agreement to repay the sum borrowed.

(B) All members are or become purchasers of merchandise or other property (exclusive of securities, investment certificates and bank deposits) under an agreement to pay the balance of the purchase price.

(2) The group numbers not less than 100 new entrants yearly or,

in the case of a credit union, not less than 50 borrowers yearly.

(3) The amount insured on any one borrower or purchaser does not exceed:

(A) The amount of the loan commitment in the case of an agricultural or horticultural loan commitment (as defined in Section 10203.55) repayable in one sum or in irregular installments within a period not in excess of 18 months from the initial date of the loan commitment, or one hundred thousand dollars ($100,000), whichever is less, and

(B) In all other cases the balance of the indebtedness to the financial institution or vendor, or one hundred thousand dollars ($100,000), whichever is less, on any one life.

(4) The repayment or payment of purchase price is to be made, under the agreement of loan or purchase; in substantially equal installments over a period not exceeding 40 years; or in installments that may vary according to the terms of a signed agreement; or in payments or installments in accordance with the usual terms of the creditor in the case of an open-ended agreement to extend credit, a revolving loan or revolving charge account; or in one sum or irregular installments within a period not in excess of 18 months from the initial date of the commitment on an agricultural or horticultural loan.

(5) The policy is issued upon application of and made payable to the financial institution, vendor, or a creditor to whom such vendor may transfer title to the indebtedness, as beneficiary, and the premiums are paid by or through the financial institution, vendor, or such creditor.

(b) A policy of insurance conforming to the provisions of this section is not subject to the provisions of Section 10209 or 10213.

CHAPTER 863

An act to add Sections 1176.1 and 1176.3 to the Labor Code, relating to wages, hours and working conditions.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 1176.1 is added to the Labor Code, to read:

1176.1. Any interested party may petition the commission requesting the adoption, amendment, or repeal of a regulation. The petition shall state clearly and concisely all of the following:

(a) The substance or nature of the regulation, amendment, or repeal that is requested.

(b) The reason for the request.

(c) Reference to the commission's authority to take the action

that is requested.

SEC. 2. Section 1176.3 is added to the Labor Code, to read:

1176.3. (a) Within 120 days of the receipt of a petition requesting the adoption, amendment, or repeal of a regulation, the commission shall notify the petitioner in writing of the receipt of the petition, set the matter for consideration at a public meeting, and issue a written decision taking one of the following actions:

(1) Setting the matter for public hearing pursuant to Section 1178 or 1178.5.

(2) Denying the petition. A decision denying a petition shall include a statement explaining the reasons for the denial.

(b) The petitioner may request reconsideration of any part or all of a decision denying a petition pursuant to paragraph (2) of subdivision (a) of Section 1176.3. The commission's reconsideration of any matter relating to a petition shall be subject to subdivision (a), except that a decision to deny reconsideration shall be final.

(c) In cases where a petition is referred to a wage board, the commission shall complete its final actions on the petition within 90 days after completion of the public hearing process pursuant to subdivision (c) of Section 1178.5.

CHAPTER 864

An act relating to public utilities.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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 Tax Reform Act of 1986 (Public Law 99-514) represents a comprehensive change in federal income tax law that will profoundly affect the citizens of the state.

(b) Electric, gas, telephone, and other public utility rates are determined in part based on the amount of revenue that public utilities need to pay their income taxes.

(c) Public utility customers and subscribers could see a significant reduction in their utility bills if tax reform savings are passed on to them.

SEC. 2. The Public Utilities Commission shall review and analyze the public utility rate implications of the federal Tax Reform Act of 1986 (Public Law 99-514), and on or before January 15, 1988, the commission shall report to the Legislature on the degree to which public utility tax savings should be utilized to lower public utility rates.

CHAPTER 865

An act to amend Sections 16750 and 16760 of the Business and Professions Code, relating to restraint of trade.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. The purposes of this act are to:

(a) Provide as declarative of existing law that courts have the inherent authority to award reasonable attorney's fees and costs of suit to plaintiffs who obtain injunctive relief in antitrust actions.

(b) Provide as declarative of existing law that courts have the authority to order preliminary or permanent injunctive relief in actions brought pursuant to Section 16750 of the Business and Professions Code.

(c) Harmonize the damage provisions of state and federal antitrust law with respect to parens patriae actions brought by the Attorney General or district attorneys.

SEC. 2. Section 16750 of the Business and Professions Code is amended to read:

16750. (a) Any person who is injured in his or her business or property by reason of anything forbidden or declared unlawful by this chapter, may sue therefor in any court having jurisdiction in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover three times the damages sustained by him or her, interest on his or her actual damages pursuant to Section 16761, and preliminary or permanent injunctive relief when and under the same conditions and principles as injunctive relief is granted by courts generally under the laws of this state and the rules governing these proceedings, and shall be awarded a reasonable attorneys' fee together with the costs of the suit.

This action may be brought by any person who is injured in his or her business or property by reason of anything forbidden or declared unlawful by this chapter, regardless of whether such injured person dealt directly or indirectly with the defendant.

The amendments to this section adopted at the 1959 Regular Session of the Legislature do not apply to any action commenced prior to September 18, 1959.

(b) The state and any of its political subdivisions and public agencies shall be deemed a person within the meaning of this section.

(c) The Attorney General may bring an action on behalf of the state or of any of its political subdivisions or public agencies to recover the damages provided for by this section, or by any comparable provision of federal law, provided that the Attorney

General shall notify in writing any political subdivision or public agency of his or her intention to bring any such action on its behalf, and at any time within 30 days thereafter, such political subdivision or public agency may, by formal resolution of its governing body or as otherwise specifically provided by applicable law, withdraw the authority of the Attorney General to bring the intended action. In any action brought pursuant to this section on behalf of any political subdivision or public agency of the state, the state shall retain for deposit in the Attorney General antitrust account within the General Fund, out of the proceeds, if any, resulting from such action, an amount equal to the expense incurred by the Attorney General in the investigation and prosecution of such action or an amount equal to 10 percent of the total recovery obtained by the Attorney General, whichever is greater.

(d) In any antitrust action brought on behalf of the state in which the Attorney General is the class representative of political subdivisions, public agencies, or citizens of the state who have been affected by the matters set forth in the complaint, the state shall retain for deposit in the Attorney General antitrust account within the General Fund, the proceeds, if any, of any attorneys' fees awarded by the court in which such case is located, to the Attorney General, resulting from such class representation.

(e) In any action brought by the Attorney General pursuant to either state or federal antitrust laws for the recovery of damages by the state or any of its political subdivisions or public agencies, in addition to his or her other powers and authority, the Attorney General may enter into contracts relating to the investigation and the prosecution of such action with any other party plaintiff who has brought a similar action for the recovery of damages and with whom the Attorney General finds it advantageous to act jointly, or to share common expenses or to cooperate in any manner relative to such action. In any such action, notwithstanding the provisions of Section 12520 of the Government Code, the Attorney General may undertake, among other things, either to render legal services as special counsel to, or to obtain the legal services of special counsel from any department or agency of the United States, of this state or any other state or any department or agency thereof, any county, city, public corporation or public district of this state or of any other state, that has brought or intends to bring a similar action for the recovery of damages, or their duly authorized legal representatives in such action. The Attorney General may also enter into any agreement authorized by Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code with any governmental entity enumerated in this subdivision, notwithstanding any provision to the contrary contained in Section 6500 of the Government Code. Every contract or agreement entered into pursuant to this subdivision (e) shall be approved by the Department of General Services.

(f) The amounts paid into the Attorney General antitrust account

within the General Fund pursuant to subdivisions (c), (d) and (e) arising from the same action or companion actions shall not cumulatively exceed the greater of ten percent (10%) of the total recovery in all actions resulting from the Attorney General's representation or an amount equal to the expenses incurred by the Attorney General in the investigation and prosecution of such actions. Any excess shall be paid into the General Fund.

(g) The district attorney of any county may prosecute any action on behalf of such county or any city or public agency or political subdivision located wholly within such county which the Attorney General is authorized to bring pursuant to subdivision (c) of this section, whenever it appears that the activities giving rise to such prosecution or the effects of such activities occur primarily within such county. The district attorney shall file with the Attorney General at least 30 days prior to the filing of any such action a copy of the proposed complaint together with a confidential memorandum and report explaining the facts giving rise to the proposed prosecution and supporting the filing of the new complaint. Prior to entering into any stipulated or consent judgment or other settlement of any such action, the district attorney shall file with the Attorney General at least 30 days prior to the execution thereof a copy of the proposed settlement together with a memorandum of explanation of the settlement. The Attorney General may waive any time requirements provided in this subdivision. In any investigation or action undertaken or brought by a district attorney pursuant to this section, if the Attorney General deems it necessary and in the public interest, the Attorney General may take full charge of any such investigation or prosecution, and the Attorney General shall have all the powers granted by Section 12550 of the Government Code in respect thereto.

(h) In any action prosecuted pursuant to the provisions of subdivision (g) a district attorney may exercise all of the powers conferred on the Attorney General by subdivision (e) provided that every contract or agreement entered into pursuant to this subdivision by a district attorney shall first be approved by the governing authority of the agency in his or her county.

(i) In any action brought pursuant to subdivision (g) a district attorney may represent any political subdivision located within his or her county directly, in which case he or she shall notify in writing such political subdivision of his or her intention to bring any such action on its behalf, and at any time within 30 days thereafter, that political subdivision may, by formal resolution of its governing body or as otherwise specifically provided by applicable law, withdraw the authority of the district attorney to bring the intended action. In any action in which a district attorney directly represents any political subdivision located within his county, the district attorney shall retain out of the proceeds, if any, resulting from such action, an amount equal to the expense incurred by the district attorney in the investigation and prosecution of such action or an amount equal to

10 percent of the total recovery obtained by the district attorney, whichever is greater. In any action brought pursuant to subdivision (g) in which the county, through the district attorney, is the class representative of political subdivisions located within such county, the district attorney shall retain the proceeds, if any, of any attorneys' fees awarded by the court in which such action is pending to the district attorney, resulting from such class representation. All proceeds retained by a district attorney pursuant to this subdivision shall be deposited in the appropriate account as provided by law.

(j) Nothing in this section shall be construed to authorize any district attorney to exercise the powers conferred upon the Attorney General by an act of Congress of September 30, 1976, (P.L. 94-905; 90 Stat. 1983) also known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976, except at the direction of the Attorney General.

SEC. 3. Section 16760 of the Business and Professions Code is amended to read:

16760. (a) (1) The Attorney General may bring a civil action in the name of the people of the State of California, as parens patriae on behalf of natural persons residing in the state, in the superior court of any county which has jurisdiction of a defendant, to secure monetary relief as provided in this section for injury sustained by such natural persons to their property by reason of any violation of this chapter. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief (A) which duplicates amounts which have been awarded for the same injury, or (B) which is properly allocable to (i) natural persons who have excluded their claims pursuant to paragraph (2) of subdivision (b), and (ii) any business entity.

(2) The court shall award the state as monetary relief three times the total damage sustained as described in paragraph (1), the interest on the total damages pursuant to Section 16761, and the costs of suit, including a reasonable attorney's fee.

(3) The court may, in its discretion, award a reasonable attorney's fee to a prevailing defendant upon a finding that the attorney general or district attorney has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

(b) (1) In any action brought under this section, the Attorney General shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

(2) Any person on whose behalf an action is brought under paragraph (1) of subdivision (a) may elect to exclude from adjudication the portion of the claim for monetary relief attributable to him or her by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1).

(3) The final judgment in an action under paragraph (1) of subdivision (a) shall be res judicata as to any claim under this section by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1).

(c) An action under paragraph (1) of subdivision (a) shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

(d) In any action under this chapter, where there has been a determination that a defendant agreed to fix prices, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the pro rata allocation of illegal overcharges or of excess profits, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

(e) Monetary relief recovered by the Attorney General under this section shall be distributed as follows:

(1) In such manner as the superior court having jurisdiction over the action in its discretion may authorize to insure, to the extent possible, that each person be afforded a reasonable opportunity to secure his or her appropriate portion of the monetary relief.

(2) The Attorney General shall retain that portion of the monetary relief awarded by the court as costs of suit and attorney's fee for deposit in the Attorney General Antitrust Account within the General Fund.

(3) To the extent that the monetary relief awarded by the court is not exhausted by distribution under paragraphs (1) and (2), the remaining funds shall be treated under the provisions of Article 3 (commencing with Section 1530) and Article 4 (commencing with Section 1540) of Chapter 7 of Title 10 of Part 3 of the Code of Civil Procedure as if it were unclaimed property, as defined in Section 1300 of the Code of Civil Procedure.

(f) The powers granted in this section are in addition to and not in derogation of the powers granted to the Attorney General by common law in respect to bringing actions parens patriae.

(g) The district attorney of any county may prosecute any action on behalf of the natural persons residing in such county which the Attorney General is authorized to bring pursuant to subdivision (a), whenever it appears that the activities giving rise to such prosecution or the effects of such activities occur primarily within such county. Prior to bringing any such action, a district attorney shall comply with the notice requirements provided in subdivision (g) of Section 16750. In any action brought pursuant to this subdivision, the provisions of subdivisions (a) to (e), inclusive, shall be applicable, except that the portion of monetary relief awarded by the court as attorney's fee and costs shall be retained by the district attorney for deposit in the appropriate account as provided by law.

CHAPTER 866

An act to amend Section 17577.2 of the Business and Professions Code, relating to water treatment devices, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 17577.2 of the Business and Professions Code is amended to read:

17577.2. It is unlawful for any person soliciting a sale, rental, lease, or order for water treatment devices to do any of the following:

(a) Make false claims or statements that are not entirely true, or statements that are misleading, about contamination problems in tap water.

(b) Make statements which are not true or applicable in all situtations which they purport to cover. This prohibition includes, but is not limited to, the following:

(1) Claims that state or imply scientific certainty regarding the relationship between acute or chronic illnesses and water quality.

(2) Statements which overstate the kind and degree of problems caused by water treated by public water systems.

(3) Statements stating or implying that the water flowing from a water treatment device is "pure," "safe," or the use of other words or terms which state or imply that the treatment device improves the quality of tap water.

(c) Make product performance claims or product benefit claims unless they are based on factual data of a type and quantity reasonably appropriate for the claims being made, which data is in existence at the time the claims are made.

(d) Notwithstanding subdivision (c), make product performance claims or product benefit claims that the device affects health or the safety of drinking water, unless the device has been certified by the State Department of Health Services pursuant to Chapter 8.5 (commencing with Section 4057) of Division 5 of the Health and Safety Code.

This subdivision shall become operative one year after the effective date of the regulations adopted pursuant to Section 4057.1 of the Health and Safety Code.

(e) Make statements about the performance attributes or benefits claimed for a product unless they are adequately described or qualified in complete, comprehensive, and detailed terms and are based on proven facts.

(f) Make claims which describe a problem and offer a solution unless the circumstances under which the problem is likely to arise are clearly and accurately identified.

(g) Use pictures, exhibits, graphs, charts, or other graphic portrayals unless they are clearly and unambiguously truthful.

(h) Omit material facts from advertising material or statements if the effect would be to mislead or to misrepresent.

(i) Use endorsements or testimonials unless they contain no misleading implications and they reflect the most current opinion and qualifications of the person giving it.

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:

This bill will remove an unintended restriction on the sale of water treatment devices. The restriction places an unintended and undue burden on commercial activities; thus it is necessary that this act take effect immediately.

CHAPTER 867

An act to amend Sections 31020, 31021, 31038, 31113, 31115, 31150, 31152, 31153, 31158, 31210, 31220, 31300, 31320, 31322, 31401, 31403, 31404, 31405, 31506, 31507, 31508, and 31603 of, to amend and renumber Section 31953 of, to add Sections 31034.5, 31047.5, and 31110.5 to, and to repeal Sections 31005, 31321, 31323, 31407, and 31505 of, the Financial Code, relating to business and industrial development corporations.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 31005 of the Financial Code is repealed.

SEC. 2. Section 31020 of the Financial Code is amended to read:

31020 The Legislature finds all of the following:

(a) That it is necessary to increase job opportunities in this state.

(b) That promoting the establishment, growth, and expansion of business firms in this state is an efficient way to increase job opportunities in this state.

(c) That it is appropriate to provide for the licensing and regulation of business and industrial development corporations which will provide financing assistance and management assistance primarily to business firms in this state.

(d) That the federal government, through the Small Business Administration and other federal agencies, offers programs for providing, through such intermediaries as business and industrial development corporations, financing assistance and management assistance to business firms in this state.

(e) That, in order that this state may obtain the full benefits of

such programs, it is necessary that this state provide for the licensing and regulation of business and industrial development corporations.

(f) That only California corporations should be licensed to transact business as business and industrial development corporations because, compared with other types of persons, California corporations can be more effectively regulated and supervised, have greater permanency of existence, and can give better assurance of uninterrupted service.

SEC. 3. Section 31021 of the Financial Code is amended to read:

31021. (a) The purposes of this division are:

(1) To provide for the licensing and regulation of business and industrial development corporations which will provide financing assistance and management assistance primarily to business firms in this state.

(2) To provide for the licensing and regulation of business and industrial development corporations so that such corporations will constitute state development companies for purposes of Sections 501 and 502 of the Small Business Investment Act of 1958 and eligible lending institutions for purposes of Section 7 (a) of the Small Business Act.

(3) To provide for the safe and sound conduct of the business of licensees.

(4) To maintain the confidence of the Small Business Administration and other governmental agencies in licensees.

(b) The purposes of this division, as set forth in subdivision (a), constitute standards which the superintendent shall observe in administering the provisions of this division.

SEC. 4. Section 31034.5 is added to the Financial Code, to read:

31034.5. "Business firm in another state" means both of the following:

(a) Any person which transacts business on a regular and continual basis at one or more places of business in another state of the United States or the District of Columbia, with respect to the transacting of that business at those places of business.

(b) Any person which proposes to establish one or more places of business in another state of the United States or in the District of Columbia and to transact business on a regular and continual basis at those places of business, with respect to the establishment of those places of business and the transacting of that business at those places of business.

SEC. 5. Section 31038 of the Financial Code is amended to read:

31038. "Control", when used with respect to a specified person, means possession, direct or indirect, of the power to do either of the following:

(a) To vote 35 percent or more of any class of the voting securities issued by the specified person.

(b) To direct or cause the direction of the management and policies of such specified person, whether through the ownership of voting securities, by contract (other than a commercial contract for

goods or nonmanagement services), or otherwise; provided, however, that no natural person shall be deemed to control a person solely on account of being a director, officer, or employee of such person. For purposes of this subdivision, any person who, directly or indirectly, owns of record or beneficially, holds with power to vote, or holds proxies with discretionary authority to vote, 20 percent or more of any class of the then outstanding voting securities issued by a corporation shall be rebuttably presumed to control such corporation. This presumption is a presumption affecting the burden of proof.

SEC. 6. Section 31047.5 is added to the Financial Code, to read:

31047.5. "Parent," when used with respect to a specified person other than a natural person, means any person other than a natural person which controls the specified person, directly or indirectly through one or more intermediaries.

SEC. 7. Section 31110.5 is added to the Financial Code, to read:

31110.5. The superintendent may provide information relating to a licensee to the Small Business Administration or to any governmental agency which licenses or regulates the licensee or any parent or subsidiary of the licensee.

SEC. 8. Section 31113 of the Financial Code is amended to read:

31113. Before any applicant for a license is issued a license, such applicant and each parent and subsidiary of such applicant shall file, and each person who becomes a parent or subsidiary of a licensee shall, not less than 30 days after becoming a parent or subsidiary of such licensee, file, with the superintendent, in such form as the superintendent may by regulation or order require, an irrevocable consent appointing the superintendent and his or her successor from time to time in office to be such person's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against such person, or his or her successor, executor, or administrator, which arises under this division or under any regulation or order issued under this division after such consent has been filed, with the same force and validity as if served personally on such person. Service may be made by leaving a copy of the process at any office of the superintendent, but such service is not effective unless (a) the party making such service, who may be the superintendent, forthwith sends notice of such service and a copy of the process by registered or certified mail to the party served at his or her last address on file with the superintendent, and (b) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

SEC. 9. Section 31115 of the Financial Code is amended to read:

31115. (a) Fees shall be paid to, and collected by, the superintendent, as follows:

(1) The fee for filing with the superintendent an application for

a license shall be two thousand dollars ($2,000).

(2) The fee for filing with the superintendent an application for approval to acquire control of a licensee shall be one thousand dollars ($1,000).

(3) The fee for filing with the superintendent an application for approval for a licensee to merge with another corporation; an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee, shall be one thousand dollars ($1,000); provided, however, that whenever two or more such applications relating to the same merger, purchase, or sale are filed with the superintendent, the fee for filing each application shall be the quotient determined by dividing one thousand dollars ($1,000) by the number of the applications.

(4) The fee for filing with the superintendent an application for approval to relocate the head office of a licensee shall be one hundred dollars ($100).

(5) The fee for issuing a license shall be twenty-five dollars ($25).

(6) Each person which is licensed under this division on June 1 of any year shall pay, on or before the following July 1, a fee of two thousand dollars ($2,000).

(7) Whenever the superintendent examines any licensee or any affiliate of a licensee, such licensee shall pay, within 10 days after receipt of a statement from the superintendent, a fee of two hundred dollars ($200) per day for each examiner engaged in such examination plus, in case it is necessary for any examiner engaged in such examination to travel outside this state, the travel expenses of such examiner.

(b) (1) Each fee for filing an application with the superintendent shall be paid at the time when such application is filed with the superintendent.

(2) No fee for filing an application with the superintendent shall be refundable, regardless of whether such application is approved, denied, withdrawn, or abandoned.

SEC. 10. Section 31150 of the Financial Code is amended to read:

31150. (a) Except as otherwise provided in subdivision (b), no person transacting business in this state, other than a licensee, shall use any name or title which indicates that it is a business and industrial development corporation or otherwise represent that it is a business and industrial development corporation or that it is a licensee.

(b) Any California corporation which proposes to apply for a license or which has applied for a license, may, before being issued a license, use a name or title which indicates that it is a business and industrial development corporation if it meets all of the following requirements:

(1) The corporation shall append to the name the designation "proposed," "in organization," or "in formation," or any similar

designation which the superintendent may approve. The designation shall be set forth at least as conspicuously as the name or title.

(2) The corporation may perform only such acts as may be necessary (A) to apply for and obtain such license and (B) otherwise to prepare to commence transacting business as a licensee.

(3) The corporation shall not represent that it is a licensee.

SEC. 11. Section 31152 of the Financial Code is amended to read:

31152. If the superintendent finds all of the following with respect to an application for a license, the superintendent shall approve the application:

(a) That the applicant has net worth in an amount which is not less than one million five hundred thousand dollars ($1,500,000) and which is adequate for the applicant to transact business as a business and industrial development corporation.

(b) That the applicant has lendable funds in an amount which is not less than one million five hundred thousand dollars ($1,500,000) and which is adequate for the applicant to transact business as a business and industrial development corporation.

(c) That the applicant has, in addition to the requirements of subdivision (b), financial resources in an amount which is adequate for the applicant to pay its expenses in transacting business as a business and industrial development corporation for a period of not less than three years.

(d) That the directors, officers, and controlling persons of the applicant are each of good character and sound financial standing, that the directors and officers of the applicant are each competent to perform their functions with respect to the applicant, and that the directors and officers of the applicant are collectively adequate to manage the business of the applicant as a business and industrial development corporation. For purposes of this subdivision, the superintendent shall accord weight to the prior or current successful operation of a commercial enterprise.

(e) That it is reasonable to believe that the applicant, if licensed, will comply with all applicable provisions of this division and of any regulation or order issued under this division.

(f) That the applicant has reasonable promise of successful operation as a business and industrial development corporation.

(g) That the licensing of the applicant will promote the public convenience and advantage.

If, after notice and a hearing, the superintendent finds otherwise, he or she shall deny the application.

SEC. 12. Section 31153 of the Financial Code is amended to read:

31153. Before any applicant for a license is issued a license, each person which is a parent or subsidiary of such applicant shall file, and each person who becomes a parent or subsidiary of a licensee shall, not less than 30 days after becoming a parent or subsidiary of such licensee, file, with the superintendent, in such form as the superintendent may by regulation or order require, an agreement

that such person shall comply with all applicable provisions of this division and of any regulation or order issued under this division.

SEC. 13. Section 31158 of the Financial Code is amended to read:

31158. (a) The fact that a California corporation is licensed under any law other than this division shall not preclude such corporation from applying for or being issued a license under this division unless the transaction of business by such corporation as a licensee under such other law would violate any provision of this division or of any regulation or order issued under this division or would be contrary to the purposes of this division.

(b) The fact that a California corporation is licensed under this division shall not preclude such corporation from applying for or being issued a license under any other law unless the transaction of business by such corporation as a licensee under such other law would violate any provision of this division or of any regulation or order issued under this division or would be contrary to the purposes of this division.

SEC. 14. Section 31210 of the Financial Code is amended to read:

31210. The board of directors of each licensee shall consist of not less than five directors.

SEC. 15. Section 31220 of the Financial Code is amended to read:

31220. Notwithstanding any other law of this state, but subject to the provisions of Section 31550:

(a) Any commercial bank or trust company organized under the laws of this state may, with the prior approval of the superintendent, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such commercial bank or trust company shall not at any time exceed 2½ percent of the shareholders' equity of such commercial bank or trust company. This subdivision shall not apply to any loan or other extension of credit made by a commercial bank organized under the laws of this state to a licensee in acccordance with the Banking Law (Division 1 (commencing with Section 99)).

(b) Any savings association organized under the laws of this state may, with the prior approval of the Savings and Loan Commissioner, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such savings association shall not at any time exceed ½ percent of the total outstanding loans of such savings association.

(c) Any insurance company admitted to transact insurance business in this state may, with the approval of the Insurance Commissioner, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such insurance company shall not at any time exceed 2½ percent of the unassigned surplus of such insurance company.

(d) Any public utility licensed or regulated by the Public Utilities Commission may, with the approval of the Public Utilities Commission, acquire and hold securities issued by a licensee;

provided, however, that the aggregate amount of securities issued by licensees which are held by such public utility company shall not at any time exceed ½ percent of the total assets of such public utility company.

(e) Any industrial loan company organized under the laws of this state may, with the prior approval of the Commissioner of Corporations, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such industrial loan companies shall not at any time exceed 5 percent of the net outstanding loans and obligations of such companies.

SEC. 16. Section 31300 of the Financial Code is amended to read:

31300. Each licensee shall maintain its head office in this state.

SEC. 17. Section 31320 of the Financial Code is amended to read:

31320. (a) No licensee shall relocate its head office without the prior approval of the superintendent.

(b) No licensee shall establish, relocate, or close any office (other than its head office) unless it files a report on the action with the superintendent not less than 30 days (or such shorter period as the superintendent may approve) before taking the action.

SEC. 18. Section 31321 of the Financial Code is repealed.

SEC. 19. Section 31322 of the Financial Code is amended to read:

31322. If the superintendent finds, with respect to an application by a licensee for approval to relocate its head office:

(a) That the office at its proposed location will be reasonably accessible to the public;

(b) That it is reasonable to believe that the applicant will operate the office at its proposed location in compliance with all applicable provisions of this division and of any regulation or order issued under this division;

(c) That it will not be unsafe or unsound for the applicant to relocate the office; and

(d) That the relocation of the office will not be detrimental to the public convenience and advantage, or, if the relocation of the office would be detrimental to the public convenience and advantage, that the relocation of the office is necessary in the interests of the safety and soundness of the applicant; the superintendent shall approve the application. If, after notice and a hearing, the superintendent finds otherwise, the superintendent shall deny the application.

SEC. 20. Section 31323 of the Financial Code is repealed.

SEC. 21. Section 31401 of the Financial Code is amended to read:

31401. No licensee shall engage in any business other than one or more of the following:

(a) The business of providing financing assistance and management assistance to business firms.

(b) The business of a state development company in accordance with all applicable provisions of the Small Business Investment Act of 1958 and of the regulations of the Small Business Administration.

(c) The business of a local development company in accordance

with all applicable provisions of the Small Business Investment Act of 1958 and of the regulations of the Small Business Administration.

(d) The business of a small business investment company in accordance with all applicable provisions of the Small Business Investment Act of 1958 and of the regulations of the Small Business Administration.

SEC. 22. Section 31403 of the Financial Code is amended to read:

31403. (a) Except as provided in subdivision (b), no licensee shall provide financing assistance or management assistance to any person other than a business firm in this state.

(b) (1) If a licensee provides financing assistance to a business firm in this state, the licensee may also provide financing assistance and management assistance to the business firm with respect to business transacted in any other state of the United States or the District of Columbia.

(2) If a licensee provides financing assistance to a business firm in this state which is a franchisor, the licensee may also provide financing assistance and management assistance to any business firm in another state which is a franchisee of the franchisor.

(3) If a licensee provides financing assistance to a business firm in this state which is a franchisee of a franchisor, the licensee may also provide financing assistance and management assistance to any business firm in another state which is a franchisee of the franchisor.

SEC. 23. Section 31404 of the Financial Code is amended to read:

31404. Except as otherwise provided in subdivision (b) of Section 31403, no licensee shall provide financing assistance or management assistance for use outside this state.

SEC. 24. Section 31405 of the Financial Code is amended to read:

31405. Except as otherwise provided in subdivisions (b), (c), and (d) of Section 31406:

(a) No licensee shall provide financing assistance or management assistance to any business firm the primary business of which is to provide financing assistance or management assistance.

(b) No licensee shall provide financing assistance to any business firm for the purpose of providing financing assistance to other persons or discharging, in whole or in part, any obligation incurred for such purpose.

SEC. 25. Section 31407 of the Financial Code is repealed.

SEC. 26. Section 31505 of the Financial Code is repealed.

SEC. 27. Section 31506 of the Financial Code is amended to read:

31506. Each licensee, each director, officer, and employee of a licensee, and each parent and subsidiary of a licensee shall file with the superintendent such reports as and when the superintendent may by regulation or order require. In addition, each affiliate of a licensee (other than a parent or subsidiary of the licensee) shall file with the superintendent such reports regarding transactions between the affiliate and the licensee as and when the superintendent may require. Each report shall be in such form, shall contain such information, shall be signed in such manner, and shall

(if the superintendent so requires by regulation or order) be verified in such manner, as the superintendent may by regulation or order require.

SEC. 28. Section 31507 of the Financial Code is amended to read:

31507. (a) The superintendent shall examine each licensee not less frequently than once each calendar year.

(b) (1) The superintendent may at any time examine any licensee or any parent or subsidiary of a licensee.

(2) The superintendent may at any time examine any affiliate of a licensee (other than a parent or subsidiary of the licensee) but only with respect to matters relating to transactions between the affiliate and the licensee.

(c) The directors, officers, and employees of any licensee or of any affiliate of a licensee being examined by the superintendent and any other person having custody of any of the books, accounts, or records of such licensee or of such affiliate shall exhibit to the superintendent, on request, any or all of the books, accounts, and other records of such licensee or of such affiliate and shall otherwise facilitate such examination so far as it may be in their power to do so. However, in the case of an examination of an affiliate of a licensee other than a parent or subsidiary of the licensee, only books, accounts, and records of the affiliate which relate to transactions between the affiliate and the licensee shall be subject to this subdivision.

(d) The superintendent may, if in his or her opinion it is necessary in the examination of any licensee or of any affiliate of a licensee, retain any certified public accountant, attorney, appraiser, or other person to assist him or her, and such licensee shall pay, within 10 days after receipt of a statement from the superintendent, the fees of such person.

SEC. 29. Section 31508 of the Financial Code is amended to read:

31508. (a) No licensee shall, except with the prior approval of the superintendent, cause or permit any other person to make or keep any of its books, accounts, or other records.

(b) In case any person other than a licensee makes or keeps any of the books, accounts, or other records of such licensee, the provisions of this division and of any regulation or order issued under this division shall apply to such person with respect to the performance of such services and with respect to such books, accounts, and other records to the same extent as if such person were such licensee.

(c) In case any person other than an affiliate of a licensee makes or keeps any of the books, accounts, or other records of such affiliate or, in the case of an affiliate other than a parent or subsidiary of the licensee, the books, accounts, and other records of the affiliate that relate to transactions between the affiliate and the licensee, the provisions of this division and of any regulation or order issued under this division shall apply to such person with respect to such books, accounts, and other records to the same extent as if such person were

such affiliate.

SEC. 30. Section 31603 of the Financial Code is amended to read:

31603. No licensee shall sell all or substantially all of its business to any other person unless such other person is a licensee and such sale shall have first been approved by the superintendent.

SEC. 31. Section 31953 of the Financial Code is amended and renumbered to read:

31410. This section creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the State Constitution. The restrictions upon rates of interest contained in Section 1 of Article XV of the State Constitution shall not apply to any loans made by, or forbearances of, any licensee. This section shall apply retroactively to any such loans or forbearances.

CHAPTER 868

An act to amend Sections 6103.8, 7171, and 7174 of the Government Code, relating to state tax liens, and making an appropriation therefor.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 6103.8 of the Government Code is amended to read:

6103.8. (a) Sections 6103 and 27383 do not apply to any fee or charge for recording full releases executed or recorded pursuant to Section 7174 of the Government Code, Sections 4608 and 5003.7 of the Public Resources Code, and Sections 2194, 11496, 12494, and 32362 of the Revenue and Taxation Code, where there is full satisfaction of the amount due under the lien which is released.

(b) The fee for recording full releases listed in subdivision (a) shall be six dollars ($6).

(c) In the case of full releases recorded by the state taxing agency pursuant to Section 7174 of the Government Code, the recording agency shall be billed quarterly or, at the option of the agency, at more frequent intervals. All billing shall refer to the agency certificate number of the recorded releases.

(d) The fee for recording full releases for any document relating to an agreement to reimburse a county for public aid granted by the county shall be six dollars ($6).

(e) The fee for filing any release of judgment which was in favor of a government agency and recorded pursuant to Section 6103 or 27383 shall be six dollars ($6).

(f) Sections 6103 and 27383 do not apply to any fee or charge for recording a notice of state tax lien under subdivision (d) of Section

7171 or a certificate of release under subdivision (h) of Section 7174.

(g) The fee for recording a notice of state tax lien pursuant to subdivision (d) of Section 7171 and a certificate of release under subdivision (h) of Section 7174 shall be as permitted by Sections 27361, 27361.2, 27361.4, and 27361.8.

(h) In the case of recording a notice of state tax lien pursuant to subdivision (f) or a certificate of release pursuant to subdivision (f), the recording agency shall be billed quarterly or at the option of the agency at more frequent intervals. All billing shall refer to the agency notice or certificate number.

SEC. 2. Section 7171 of the Government Code is amended to read:

7171. (a) With respect to real property, at any time after creation of a state tax lien, the agency may record in the office of the county recorder of the county in which the real property is located a notice of state tax lien.

(b) With respect to personal property, at any time after creation of a state tax lien, the agency may file a notice of state tax lien with the Secretary of State pursuant to Chapter 14.5 (commencing with Section 7220).

(c) The notice of state tax lien recorded or filed pursuant to subdivision (a) or (b) shall include all of the following:

(1) The name and last known address of the taxpayer.

(2) The name of the agency giving notice of the lien.

(3) The amount of the unpaid tax.

(4) A statement that the amount of the unpaid tax is a lien on all real or personal property and rights to such property, including all after-acquired property and rights to property, belonging to the taxpayer.

(5) A statement that the agency has complied with all of the provisions of the applicable law for determining and assessing the tax.

(d) If the notice of state tax lien recorded in any county reflects an out-of-state address as the last known address of the taxpayer, the agency shall pay the fees required by Sections 27361, 27361.2, 27361.4, and 27361.8.

(e) The agency recording a notice of state tax lien pursuant to subdivision (d) may collect from the taxpayer, in any manner provided by law for the collection of the tax, the cost of recording.

SEC. 3. Section 7174 of the Government Code is amended to read:

7174. (a) If the agency determines that the amount of tax, interest, and any penalty are sufficiently secured by a lien on other property or that the release or subordination of the state tax lien will not jeopardize the collection of the amount of the tax, including interest and penalty, the agency may at any time release all or any portion of the property subject to the state tax lien from the lien or may subordinate the state tax lien to other liens and encumbrances.

(b) If the agency finds that the liability represented by the state

tax lien, including any interest accrued thereon, is legally unenforceable, the agency may release the lien.

(c) If the agency has recorded a notice of state tax lien as provided in Section 7171 and the liability represented by the lien, including any interest and penalty, has been satisfied in full:

(1) If the agency is other than the Controller or the State Board of Equalization, the agency shall, not later than 40 days after the liability is satisfied, record a certificate of release in the office of the county recorder where the notice of state tax lien is recorded.

(2) In the case of the Controller or the State Board of Equalization, the agency shall, not later than 40 days after the liability is satisfied, do one of the following:

(A) Record a certificate of release in the office of the county recorder where the notice of state tax lien is recorded.

(B) Deposit in the mail or otherwise deliver to the taxpayer a certificate of release.

(d) If the agency records a certificate of release under subdivision (c) or files a certificate of release under subdivision (e), the cost of recording or filing is an obligation of the taxpayer and may be collected from the taxpayer in any manner provided by law for the collection of the tax.

(e) If the agency has filed a notice of state tax lien with the Secretary of State as provided in Section 7171 and the liability represented by the state tax lien, including any interest and penalty, has been satisfied in full, the agency shall, not later than 40 days after the liability is satisfied, do one of the following:

(1) File a certificate of release with the Secretary of State.

(2) Deposit in the mail or otherwise deliver a certificate of release to the taxpayer.

(f) For the purpose of subdivisions (c) and (e), if payment is made by check, the 40-day period does not commence to run until the check has been paid by the financial institution upon which it was drawn.

(g) A certificate by the agency to the effect that any property has been released from a state tax lien or that the lien has been subordinated to other liens and encumbrances is conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.

(h) If the certificate of release recorded pursuant to subdivisions (a), (b), and (c) reflects an out-of-state address as the last known address of the taxpayer, the agency shall pay the fees permitted by Sections 27361, 27361.2, 27361.4, and 27361.8.

SEC. 4. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the Franchise Tax Board in augmentation of Item 1730-001-001 of the Budget Act of 1987.

CHAPTER 869

An act to add Sections 23039.1 and 24045.10 to the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 23039.1 is added to the Business and Professions Code, to read:

23039.1. Notwithstanding any other provision of law, any on-sale beer and wine public premises licensee who has been licensed at premises operated as a cabaret theater for at least 10 years and which has a seating capacity for at least 375 patrons may admit persons under the age of 21 years to matinee theater performances on Sundays provided that alcoholic beverages are not sold, served, or consumed on the premises during those performances.

SEC. 2. Section 24045.10 is added to the Business and Professions Code, to read:

24045.10. Notwithstanding any other provision of law, the department may issue a general on-sale license to a person who does not operate a bona fide eating place or other public premise who meets all of the following:

(a) Has operated a catering business for not less than 5 years.

(b) Has operated or owned for not less than 4 years a bona fide eating place that had a general on-sale license.

(c) Caters over 500 events annually.

(d) Serves alcoholic beverages at no more than 25 percent of the events catered annually and has revenues from the sale of alcoholic beverages which do not constitute more than 25 percent of his or her total annual revenues.

(e) Obtains an annual permit to serve alcoholic beverages at events and obtains an authorization for each event, as specified in Section 23399.

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 immediate loss of employment and taxable revenue, it is necessary that this act take effect immediately.

CHAPTER 870

An act to amend Section 1001 of the Education Code, relating to county boards of education.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 1001 of the Education Code is amended to read:

1001. (a) In those counties where the county superintendent of schools has jurisdiction over a school district situated in two or more counties, any qualified elector residing in the part of the school district situated in a county whose county superintendent of schools does not have jurisdiction of that school district shall be eligible to vote for one or more members of the county board of education of the county whose county superintendent of schools has jurisdiction over the school district. Each such elector shall be eligible to vote for the member of the county board of education representing the trustee area of that county having jurisdiction as designated by the county committee on school district organization. The committee shall apportion the portion of the school district territory not situated in the county having jurisdiction to one or more trustee areas of the other county so that that territory shall, insofar as possible, be represented as if it were situated in the county having jurisdiction. The territory so apportioned shall not become a part of the trustee area to which apportioned for any other purpose. As used in this subdivision, "school district" means any joint union elementary school district, joint union high school district, or joint unified school district, but does not include any community college district.

(b) Any person who is a resident of a county and is made eligible to vote for the county board of education of another county pursuant to subdivision (a) shall not be eligible to vote for the county board of education of the county of which he or she is a resident. Notwithstanding the foregoing provisions of this subdivision, a person shall be eligible to vote for both county boards of education if he or she is a resident of an elementary school district of any type that is included in a joint union high school district and the elementary school district and the joint union high school district are each under the jurisdiction of different county superintendents of schools.

(c) "County," for purposes of this section, includes any county other than a charter county for which the charter specifies that this section does not apply.

SEC. 2. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for

costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 871

An act relating to courts.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. The Attorney General may undertake a two-year pilot project to demonstrate methodology to improve the quantity and accuracy of disposition information relating to adult felony arrests reported to the Department of Justice pursuant to Section 13150 of the Penal Code. The Counties of Alameda, Riverside, Sacramento, Santa Cruz, and Shasta are authorized to participate in this project. For the participating counties, the district attorneys shall review adult felony arrest case information provided by the superior, municipal, and justice courts.

In addition, for participating counties, the following shall apply:

(a) The courts of the participating county shall provide the adult felony arrest case adjudication information containing the applicable data elements enumerated in Section 13125 or 13151.1 of the Penal Code to the district attorney of the county in which the court is located. Whenever a court shall order any action subsequent to the initial disposition of a case, the court shall similarly report the proceedings to the district attorney.

(b) The district attorney for the participating county, upon receipt of the adult felony case disposition information from the superior, municipal, and justice courts, shall review the reports and shall, within 30 days of receipt, furnish the Department of Justice with a report of any additions, amendments, or other changes which should be made to accurately reflect the dispositions of the adult felony arrest cases, and shall furnish copies of the additions, amendments, or changes to the court and the appropriate law enforcement agency. The report shall be furnished to the Department of Justice, and the copies provided to the court and the law enforcement agency, only after the district attorney has reconciled any additions, amendments, or changes with the records of the court which provided the original disposition information.

This act shall be in effect only until January 1, 1990, and as of that date is repealed.

CHAPTER 872

An act to amend Sections 87272 and 87272.1 of the Education Code, relating to community colleges, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 87272 of the Education Code is amended to read:

87272. Fees shall be levied by the board of governors for the issuance and renewal of teaching and related credentials, and the fingerprint investigative check conducted by the Department of Justice. The fees shall be set by the board in a manner so that revenues shall be produced sufficient to support the credentialing related activities and functions of both agencies, including continuing research and evaluation activities. In no case shall a fee levied under this section exceed forty dollars ($40).

This section shall become operative July 1, 1985, and shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1989, deletes or extends that date.

SEC. 2. Section 87272.1 of the Education Code is amended to read:

87272.1. Fees shall be levied by the board of governors for the issuance and renewal of teaching and related credentials, and the fingerprint investigative check conducted by the Department of Justice. The fees shall be set by the board in a manner so that revenues shall be produced sufficient to support the credentialing related activities and functions of both agencies, including continuing research and evaluation activities. In no case shall a fee levied under this section exceed twenty-five dollars ($25).

This section shall become operative January 1, 1989.

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 postpone until January 1, 1989, a statutory reduction in the maximum authorized fee for the issuance and renewal of community college teaching and related credentials, it is necessary that this act take effect immediately.

CHAPTER 873

An act relating to Andrews v. the State of California, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. The sum of one million three hundred ninety-seven thousand five hundred dollars ($1,397,500) is hereby appropriated from the General Fund to the Department of Developmental Services in order to pay the settlement in the action captioned Andrews v. State of California, et al., Case No. CV 83-6336 (JSL) (Mcx), brought in the United States District Court for the Central District of California.

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 relieve the substantial hardship of the plaintiffs by paying the settlement in the action referenced in this act as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 874

An act to add Section 25210.1 to the Health and Safety Code, relating to hazardous chemicals.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 25210.1 is added to the Health and Safety Code, to read:

25210.1. (a) For purposes of this section, the following definitions shall apply:

(1) "Halocarbon chemicals" means chemical compounds which contain carbon, and one or more halogens, and which may include hydrogen, including, but not limited to, trichloroethane, tetrachloroethylene, methylene chloride, halogenated benzenes, and carbon tetrachloride.

(2) "Aromatic hydrocarbon chemicals" means chemical compounds containing carbon and hydrogen and at least one six-carbon ring containing double bonds, including, but not limited

to, benzene, toluene, and napthalene.

(3) "Sewage disposal system" means a septic tank, cesspool, sewage seepage pit, leachline, or other structure into which sewage is drained for purposes of disposal and which is not connected to a municipal treatment works.

(b) On and after July 1, 1988, no person shall use any product containing halocarbon chemicals or aromatic hydrocarbon chemicals for the purposes of cleaning or unclogging a sewage disposal system.

(c) On and after July 1, 1988, no person shall sell any product containing halocarbon chemicals or aromatic hydrocarbon chemicals in a container which indicates that the product may be used for the purposes of cleaning or unclogging a sewage disposal system. The department may adopt regulations regarding the sales of these products for the purposes of this subdivision.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 875

An act to amend Sections 7076.5 and 7137 of the Business and Professions Code, relating to contractors, and making an appropriation therefor.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 7076.5 of the Business and Professions Code is amended to read:

7076.5. (a) A contractor may inactivate his or her license by submitting a form prescribed by the registrar accompanied by the current active license certificate. When the current license certificate has been lost, the licensee shall pay the fee prescribed by law to replace the license certificate. Upon receipt of an acceptable application to inactivate, the registrar shall issue an inactive license certificate to the contractor. The holder of an inactive license shall not be entitled to practice as a contractor until his or her license is reactivated.

(b) Any licensed contractor who is not engaged in work or activities which require a contractor's license may apply for an inactive license.

(c) Inactive licenses shall be valid for a period of four years from their due date.

(d) During the period that an existing license is inactive, no bonding requirement pursuant to Section 7071.6, 7071.8 or 7071.9 or qualifier requirement pursuant to Section 7068 shall apply. An applicant for license having met the qualifications for issuance may request that the license be issued inactive unless the applicant is subject to the provisions of Section 7071.8.

(e) The board shall not refund any of the renewal fee which a licensee may have paid prior to the inactivation of his or her license.

(f) An inactive license shall be renewed on each established renewal date by submitting the renewal application and paying the inactive renewal fee.

(g) An inactive license may be reactivated by submitting an application acceptable to the registrar, by paying the full renewal fee for an active license and by fulfilling all other requirements of this chapter. No examination shall be required to reactivate an inactive license.

(h) The inactive status of a license shall not bar any disciplinary action by the board against a licensee for any of the causes stated in this chapter.

SEC. 2. Section 7137 of the Business and Professions Code is amended to read:

7137. The amount of the fees prescribed by this chapter shall be fixed by the board according to the following schedule:

(a) The application fee for an original license in a single classification shall not exceed one hundred fifty dollars ($150).

The application fee for each additional classification applied for in connection with an original license shall not exceed fifty dollars ($50).

The application fee for each additional classification pursuant to Section 7059 shall not exceed fifty dollars ($50).

The application fee to replace a responsible managing officer or employee pursuant to Section 7068.2 shall not exceed fifty dollars ($50).

(b) The fee for rescheduling an examination for an applicant who has applied for an original license, additional classification, a change of responsible managing officer or responsible managing employee, or for an asbestos certification or hazardous substance removal certification, shall not exceed fifty dollars ($50).

(c) The initial license fee for an active or inactive license shall not exceed one hundred fifty dollars ($150).

(d) The renewal fee for an active license shall not exceed two hundred dollars ($200).

The renewal fee for an inactive license shall not exceed seventy-five dollars ($75).

(e) The delinquency fee is an amount equal to 50 percent of the renewal fee, but not more than twenty-five dollars ($25).

(f) The registration fee for a home improvement salesperson shall not exceed fifty dollars ($50).

(g) The renewal fee for a home improvement salesperson

registration shall not exceed seventy-five dollars ($75).

(h) The application fee for an asbestos certification exam shall not exceed fifty dollars ($50).

(i) The application fee for a hazardous substance removal or remedial action certification examination shall not exceed fifty dollars ($50).

CHAPTER 876

An act to amend Section 220.5 of the Streets and Highways Code, and to amend Section 19625 of the Welfare and Institutions Code, relating to roadside rests.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 220.5 of the Streets and Highways Code is amended to read:

220.5. (a) The department shall authorize the placement of vending machines in safety roadside rests, unless prohibited by federal laws, rules, or regulations.

(b) The department, pursuant to provisions contained in paragraph (5) of subsection (a) of Section 2 of the Act of June 20, 1936, commonly known as the Randolph-Sheppard Act, as amended (20 U.S.C. Sec. 107a(a)(5)), shall give preference for the placement of vending machines in safety roadside rest areas along state highways to vendors operating under the Business Enterprises Program for the Blind in accordance with Article 5 (commencing with Section 19625) of Chapter 6 of Part 2 of Division 10 of the Welfare and Institutions Code.

(c) The department may determine which safety roadside rest areas are suitable for inclusion in the vending machine program and the appropriate location within each roadside rest area for the placement of the machines, and the department shall approve the design and construction of any shelter or structure that may be required for the machines.

(d) The department shall determine the costs for any maintenance, operations, design review, or other activities related to the vending machines and shall be reimbursed for those costs from the revenues derived from the operation of the machines.

(e) Any money received by the department for authorizing the placement of, or from the income from, the vending machines shall be transferred to the State Highway Account.

SEC. 2. Section 19625 of the Welfare and Institutions Code is amended to read:

19625. For the purpose of providing blind persons with

remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons licensed under this article shall be authorized to operate vending facilities on any property within this state as provided in this article. In order to administer this article, the director shall establish the Business Enterprises Program for the Blind.

(a) With respect to vending facilities on state property, priority shall be given to blind persons, including the assignment of vending machine income as provided in this article. As used in this article, "state property" means all real property, or part thereof, owned, leased, rented, or otherwise controlled or occupied by any department or other agency or body of this state, but does not include any of the following:

(1) A building in which less than 100 state employees are or will be located during normal working hours.

(2) A building in which less than 15,000 square feet of interior floor space are to be used for state government purposes or in which services are to be provided to the public.

(3) A building to be occupied by state government employees for less than three years.

(b) With respect to vending on federal property within this state, as provided in federal law known as the Randolph-Sheppard Act, including the amendments thereto entitled, "Randolph-Sheppard Act Amendments of 1974," this article is intended to conform thereto and is to be of no force or effect if, and to the extent that, any provision of this article or any regulation adopted under this article is in conflict therewith.

(c) With respect to all other property within this state, whether owned or controlled privately or by any county, city, city and county, or other political subdivision, the department shall take all feasible steps to encourage and establish thereon vending by blind persons licensed under this article and is authorized to that end to enter into appropriate agreements with the entities or persons owning or controlling such other property, provided that all such agreements shall be in writing and shall be in conformity with the provisions of this article.

CHAPTER 877

An act to amend Sections 6980, 6980.2, 6980.20, 6980.27, and 6980.42 of, to add Sections 6980.6, 6980.7, and 6980.41 to, and to repeal and add Sections 6980.12, 6980.21, 6980.22, 6980.23, 6980.24, 6980.25, 6980.28, 6980.32, and 6980.40 of, to repeal Sections 6980.14, 6980.16, and 6980.29 of, the Business and Professions Code, relating to locksmiths, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 6980 of the Business and Professions Code is amended to read:

6980. The following terms as used in this chapter have the meaning expressed in this article:

(a) "Bureau" means the Bureau of Collection and Investigative Services.

(b) "Chief" means the Chief of the Bureau of Collection and Investigative Services.

(c) "Department" means the Department of Consumer Affairs.

(d) "Director" means the Director of Consumer Affairs.

(e) "Employee" means an individual who works for a salary or wages in the service of another, is listed on the employer's payroll records, and is working under that person's direction and control as to how material details of the work are to be performed.

(f) "Employer" means a person who employs an individual for wages or salary, lists the individual on the employer's payroll records, withholds all legally required deductions and contributions, and controls and directs the employee in the material details of how work is to be performed.

(g) "Key duplicator" means an operator of a key duplicating machine who merely duplicates keys for retail customers and who does not perform any other function of a locksmith.

(h) "Permittee" means a person certified under the provisions of this chapter as having been issued a permit by the bureau.

(i) "Person" means any individual.

SEC. 2. Section 6980.2 of the Business and Professions Code is amended to read:

6980.2. "Locksmith" means a person, other than a key duplicator, who installs, repairs, opens, and modifies locks and who makes keys for locks.

SEC. 3. Section 6980.6 is added to the Business and Professions Code, to read:

6980.6. Every power and duty granted to, or imposed upon, the director under this chapter may be delegated to the chief, except

that the director may not delegate authority to adopt, or otherwise act upon, any proposed decision of a hearing officer after a hearing under the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The chief may delegate any power or duty granted to, or imposed upon, him or her under this chapter to the deputy chief, to the assistant chief, or to any inspection, investigation, or auditing personnel of the bureau, or the department.

SEC. 4. Section 6980.7 is added to the Business and Professions Code, to read:

6980.7. The director may adopt and enforce rules and regulations as may be reasonable and necessary for issuing permits to applicants, for the conduct of the permitees, or for the general enforcement of this chapter in the protection of the public.

These rules and regulations shall be adopted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 5. Section 6980.12 of the Business and Professions Code is repealed.

SEC. 6. Section 6980.12 is added to the Business and Professions Code, to read:

6980.12. (a) This chapter applies only to locksmiths working for hire.

(b) This chapter does not apply to the following persons:

(1) Any person, or his or her agent or employee, who is the manufacturer of a product, other than locks and keys, and who installs, repairs, opens, or modifies locks or who makes keys for the locks of that product as a normal incident to its marketing.

(2) Key duplicators.

(3) Employees who are industrial or institutional locksmiths and whose services are provided only to an employer who does not provide locksmith services for hire to the public.

(4) Any person registered with the bureau pursuant to Chapter 11 (commencing with Section 7500), Chapter 11.5 (commencing with Section 7512), or Chapter 11.6 (commencing with Section 7590), if the duties of that person's position which constitute locksmithing are ancillary to the primary duties and functions of that person's position.

SEC. 7. Section 6980.14 of the Business and Professions Code is repealed.

SEC. 8. Section 6980.16 of the Business and Professions Code is repealed.

SEC. 9. Section 6980.20 of the Business and Professions Code is amended to read:

6980.20. Every person seeking a permit under this chapter shall submit a written application and fingerprints on a form prescribed by the bureau. The application and fingerprints shall be accompanied by the fingerprint processing fee and the application and permit fee specified in Section 6980.40.

SEC. 10. Section 6980.21 of the Business and Professions Code is

repealed.

SEC. 11. Section 6980.21 is added to the Business and Professions Code, to read:

6980.21. (a) If the director, with respect to an application for a permit, determines that an applicant has committed any of the following acts, or has been refused a permit under this chapter or had a permit revoked, the director may deny a permit to the applicant:

(1) Committed any act, which, if committed by a permittee, would be grounds for the suspension or revocation of a permit under this chapter.

(2) Committed any act constituting dishonesty or fraud.

(3) While unlicensed, committed, or aided and abetted the commission of, any act for which a permit is required by this chapter.

(4) Knowingly made any false statement in his or her application.

(5) Committed any act or crime constituting grounds for denial of licensure under Section 480.

(b) The denial of a 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 hearing to contest the denial, the hearing shall be requested of the director, in writing, within 30 days of the issuance of the denial.

(c) When a hearing is held under this section, it shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 12. Section 6980.22 of the Business and Professions Code is repealed.

SEC. 13. Section 6980.22 is added to the Business and Professions Code, to read:

6980.22. (a) When considering the denial of a permit under Section 6980.21, for which application has been made under this chapter, the director, in evaluating the rehabilitation of the applicant and the applicant's present eligibility for a permit, shall consider the following criteria:

(1) The nature and severity of the act or crime under consideration as grounds for denial.

(2) Evidence of any act committed subsequent to the act or crime under consideration as grounds for denial which also could be considered as grounds for denial under Section 6980.21.

(3) The time that has elapsed since commission of the act or crime referred to in paragraph (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed upon the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering the suspension or revocation of a permit issued under this chapter, on the grounds of the commission of a crime, the director, in evaluating the rehabilitation of the person and the person's present eligibility for a permit, shall consider the following criteria:

(1) The nature and severity of the criminal act or offense.

(2) The total criminal record of the person.

(3) The time that has elapsed since the commission of the criminal act or offense.

(4) Whether the licensee has complied with any terms of parole, probation, restitution, or any sanctions lawfuly imposed upon the permittee.

(5) If applicable, evidence of any proceedings held pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the permittee.

(c) When considering a petition for reinstatement of a permit, the director shall evaluate evidence of rehabilitation, considering those criteria of rehabilitation listed in subdivision (b).

SEC. 14. Section 6980.23 of the Business and Professions Code is repealed.

SEC. 15. Section 6980.23 is added to the Business and Professions Code, to read:

6980.23. Applicants for permits under this chapter shall meet the following requirements:

(a) Is at least 18 years of age.

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

(c) Complies with any requirements specified in this chapter.

(d) Complies with other qualifications as the director may adopt by regulation.

SEC. 16. Section 6980.24 of the Business and Professions Code is repealed.

SEC. 17. Section 6980.24 is added to the Business and Professions Code, to read:

6980.24. Every permit shall expire on June 30 of each odd-numbered year and shall be renewed upon submission of a written application for renewal and the renewal fee specified in Section 6980.40.

SEC. 18. Section 6980.25 of the Business and Professions Code is repealed.

SEC. 19. Section 6980.25 is added to the Business and Professions Code, to read:

6980.25. With the license renewal period beginning July 1, 1989, the bureau, by regulation, may establish a system for staggering renewal dates of permittees to best distribute the renewal work throughout the two-year renewal period. The system shall provide for a pro rata formula for the payment of renewal fees for permittees affected by implementation of the program.

SEC. 20. Section 6980.27 of the Business and Professions Code is amended to read:

6980.27. Every permittee shall notify the bureau, in writing, within 30 days, of any change of residence or business address.

SEC. 21. Section 6980.28 of the Business and Professions Code is repealed.

SEC. 22. Section 6980.28 is added to the Business and Professions Code, to read:

6980.28. A permittee shall carry a valid permit issued by the bureau at all times the permittee is engaged in the work of a locksmith, as defined in this chapter, whether on or off the premises of a locksmith shop.

SEC. 23. Section 6980.29 of the Business and Professions Code is repealed.

SEC. 24. Section 6980.32 of the Business and Professions Code is repealed.

SEC. 25. Section 6980.32 is added to the Business and Professions Code, to read:

6980.32. The bureau may suspend or revoke a permit issued pursuant to this chapter for acts including, but not limited to, any of the following acts which shall also be unlawful:

(a) Misrepresentation or concealment of a material fact in a permit application.

(b) Interference with authorized personnel engaged in the enforcement or administration of this chapter.

(c) Knowingly using or permitting the use of any of his or her skills, tools, or facilities for the commission of any crime.

(d) Conviction of a crime substantially related to the qualifications, functions, or duties of a locksmith.

(e) A violation of this chapter or the rules and regulations adopted under the authority of this chapter.

SEC. 26. Section 6980.40 is added to the Business and Professions Code, to read:

6980.40. The amount of fees to obtain or renew a permit under this chapter are as follows:

(a) The initial application and permit fee is fifty-five dollars ($55), except that if the permit will expire less than one year after its issuance, then the initial application and permit fee is twenty-eight dollars ($28).

(b) The fee for renewal of a locksmith permit is forty-two dollars ($42).

(c) All applicants seeking a permit pursuant to this chapter shall also remit to the bureau the fingerprint fee that is charged to the bureau by the Department of Justice.

SEC. 27. Section 6980.40 of the Business and Professions Code is repealed.

SEC. 28. Section 6980.41 is added to the Business and Professions Code, to read:

6980.41. The initial application and permit fee is considered an earned fee at the time an application for a permit is received by the bureau. No refund shall be made to the applicant in the event that the applicant is found to lack the required qualifications, or is otherwise denied a permit pursuant to this chapter.

SEC. 29. Section 6980.42 of the Business and Professions Code is amended to read:

6980.42. (a) The bureau shall report each month to the Controller the amount and source of all revenue received pursuant to this chapter and shall pay the entire amount thereof into the State Treasury for credit to the Private Investigator Fund.

(b) All moneys paid into the Private Investigator Fund pursuant to subdivision (a) are hereby continuously appropriated to the bureau for the purposes of this chapter.

SEC. 30. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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. 31. 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:

Certain provisions of law regulating locksmiths will become operative on July 1, 1987, and the revisions to that law made by this act are necessary to clarify, correct, and strengthen those provisions. In order for this act to clarify the existing provisions of law at the earliest possible time, it is necessary that this act go into immediate effect.

CHAPTER 878

An act to amend Sections 65080 and 65081 of, and to add Sections 14529.4, 65086, and 65086.5 to, the Government Code, relating to transportation.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 14529.4 is added to the Government Code, to read:

14529.4. The commission may include capacity-increasing projects in the adopted state transportation improvement program adopted pursuant to Section 14529 only if the project studies report has been completed for that project pursuant to Section 65086.5.

SEC. 2. Section 65080 of the Government Code is amended to read:

65080. (a) Except as provided in subdivisions (c) and (d), each transportation planning agency designated under subdivision (a) or (b) of Section 29532 shall prepare a regional transportation plan and a regional transportation improvement program directed at the achievement of a coordinated and balanced regional transportation

system, including, but not limited to, mass transportation, highway, railroad, maritime, and aviation facilities and services. The plan shall be action-oriented and pragmatic considering both the short- and long-term future and shall present clear, concise policy guidance to local and state officials. The program shall support and be consistent with the plan. Each transportation planning agency shall consider and incorporate, as appropriate, the transportation plans of cities, counties, districts, private organizations, and state and federal agencies.

(b) Each transportation planning agency shall adopt a regional transportation plan and, if it prepares a regional transportation improvement program, shall adopt a program. Prior to adoption, a public hearing shall be held, after the giving of notice of the hearing by publication in the affected county or counties pursuant to Section 6061. Prior to the adoption of the program, the governing body or the designated policy committee of the transportation planning agency shall consider the relationship between the program and the adopted plan. Each transportation planning agency shall adopt and submit annually, not later than May 1, an updated regional transportation improvement program as specified in Section 65082, and biennially, not later than November 1, an updated regional transportation plan to the California Transportation Commission and the Department of Transportation.

(c) A transportation planning agency designated under subdivision (b) of Section 29532 may have the regional transportation plan for the area under its jurisdiction prepared by the Department of Transportation by adopting a resolution to that effect prior to July 1, 1978. In that case, Section 65080.5 applies to the agency.

(d) The regional transportation improvement program shall be prepared and adopted only by the transportation planning agencies and by county transportation commissions representing urbanized areas of 50,000 or more in population. The department shall prepare the programs, on a state transportation district basis, for all other areas of the state.

SEC. 2.5. Section 65080 of the Government Code is amended to read:

65080. (a) Except as provided in subdivisions (c), (d), and (e), each transportation planning agency designated under subdivision (a) or (b) of Section 29532 shall prepare a regional transportation plan and a regional transportation improvement program directed at the achievement of a coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, and aviation facilities and services. The plan shall be action-oriented and pragmatic considering both the short- and long-term future and shall present clear, concise policy guidance to local and state officials. The program shall support and be consistent with the plan. Each transportation planning agency shall consider and incorporate, as

appropriate, the transportation plans of cities, counties, districts, private organizations, and state and federal agencies.

(b) Each transportation planning agency shall adopt a regional transportation plan and, if it prepares a regional transportation improvement program, shall adopt a program. Prior to adoption, a public hearing shall be held, after the giving of notice of the hearing by publication in the affected county or counties pursuant to Section 6061. Prior to the adoption of the program, the governing body or the designated policy committee of the transportation planning agency shall consider the relationship between the program and the adopted plan. Each transportation planning agency shall adopt and submit annually, not later than May 1, an updated regional transportation improvement program as specified in Section 65082, and biennially, not later than November 1, an updated regional transportation plan to the California Transportation Commission and the Department of Transportation.

(c) A transportation planning agency designated under subdivision (b) of Section 29532 may have the regional transportation plan for the area under its jurisdiction prepared by the Department of Transportation by adopting a resolution to that effect prior to July 1, 1978. In that case, Section 65080.5 applies to the agency.

(d) The regional transportation improvement program shall be prepared and adopted only by the transportation planning agencies and by county transportation commissions representing urbanized areas of 50,000 or more in population. The department shall prepare the programs, on a state transportation district basis, for all other areas of the state.

(e) In those counties that have a county transportation commission created pursuant to Section 130050 of the Public Utilities Code, the multicounty designated transportation planning agency, as defined in Section 130004 of the Public Utilities Code, shall prepare the regional transportation plan, and each county transportation commission shall prepare a transportation improvement plan for the county under its jurisdiction. The transportation improvement program adopted by a county transportation commission shall be consistent with the adopted regional transportation plan and shall serve as the transportation improvement program submitted to the California Transportation Commission and the Department of Transportation pursuant to Section 14527.

SEC. 3. Section 65081 of the Government Code is amended to read:

65081. The regional transportation plan shall include:

(a) A policy element that considers important transportation issues and describes the desired short- and long-range transportation goals, and pragmatic objective and policy statements. The objective and policy statements shall consider probable funding constraints.

(b) An action element that describes the programs and actions necessary to implement the plan and assigns implementation

responsibilities. In urbanized areas over 50,000 population, the action element shall include a transportation system management element that describes how the region intends to improve the people and goods movement capability of its existing transportation system through appropriate management techniques. The action element shall also include a program for developing intracity and intercity bicycle programs.

The action element may include a future development list of capacity increasing state highway projects in priority order for initiation of project studies reports. If the list is prepared within the area of the multicounty designated transportation planning agency as defined in Section 130004 of the Public Utilities Code, each county transportation commission shall adopt for the area within its jurisdiction a future development list of capacity increasing state highway projects in priority order. The future development list adopted by the multicounty transportation planning agency shall include the lists separately adopted by each county transportation commission. These lists shall be limited to the regional summation of funds available for capacity improvement projects in the adopted state transportation improvement program when distributed according to the county minimum formula defined in Section 188.8 of the Streets and Highways Code.

(c) A financial element that summarizes the cost of plan implementation, compares these costs to a realistic projection of available revenues, and includes estimates of expected surplus and deficits. It shall contain recommendations for the allocation of funds and for the development of new sources of revenues if needed.

SEC. 4. Section 65086 is added to the Government Code, to read:

65086. (a) The Department of Transportation shall carry out long-term state highway system planning to identify future highway improvements and new transportation corridors through route concept reports.

(b) The department, in conjunction with transportation planning agencies, shall develop specific project listings for the initiation of project studies reports resulting in project candidates for inclusion in regional transportation plans and the state transportation improvement program as required by Section 14529.

SEC. 5. Section 65086.5 is added to the Government Code, to read:

65086.5. (a) To the extent that the work does not jeopardize the delivery of the projects in the adopted state transportation improvement program, the Department of Transportation shall prepare a project studies report for each capacity increasing state highway project which is listed on the regional list pursuant to subdivision (b) of Section 65081. The project studies report shall include the project-related factors of limits, description, scope, costs, and the amount of time needed for initiating construction. If a regional list is not consistent with the financial limitation of subdivision (b) of Section 65081, projects for that region may be

limited in priority order to the funding limit for that region.

(b) The Department of Transportation shall seek assistance from regional and local transportation agencies or other entities for the preparation of project studies reports for projects specified in subdivision (b) of Section 65081 when the report cannot be completed so as to allow a project to be eligible for inclusion in the upcoming state transportation improvement program. Whenever project studies reports are performed by an entity other than the Department of Transportation, the department shall review and approve the report.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 65080 of the Government Code proposed by both this bill and AB 18. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 65080 of the Government Code, and (3) this bill is enacted after AB 18, in which case Section 2 of this bill shall not become operative.

CHAPTER 879

An act to add Section 1203.1ab to the Penal Code, and to add Section 729.9 to the Welfare and Institutions Code, relating to probation.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 1203.1ab is added to the Penal Code, to read:

1203.1ab. Upon conviction of any offense involving the unlawful possession, use, sale, or other furnishing of any controlled substance, as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, in addition to any or all of the terms of imprisonment, fine, and other reasonable conditions specified in or permitted by Section 1203.1, unless it makes a finding that this condition would not serve the interests of justice, the court, when recommended by the probation officer, shall require as a condition of probation that the defendant shall not use or be under the influence of any controlled substance and shall submit to drug and substance abuse testing as directed by the probation officer. If the defendant is required to submit to testing and has the financial ability to pay all or part of the costs associated with that testing, the court shall order the defendant to pay a reasonable fee, which shall not exceed the actual cost of the testing.

SEC. 2. Section 729.9 is added to the Welfare and Institutions Code, to read:

729.9. If a minor is found to be a person described in Section 602 by reason of the commission of an offense involving the unlawful

possession, use, sale, or other furnishing of a controlled substance, as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, and, unless it makes a finding that this condition would not serve the interests of justice, the court, when recommended by the probation officer, shall require, as a condition of probation, in addition to any other disposition authorized by law, that the minor shall not use or be under the influence of any controlled substance and shall submit to drug and substance abuse testing as directed by the probation officer. If the minor is required to submit to testing and has the financial ability to pay all or part of the costs associated with that testing, the court shall order the minor to pay a reasonable fee, which shall not exceed the actual cost of the testing.

SEC. 3. This act is not intended to restrict the authority of a court to order drug and substance abuse testing in other appropriate cases, not specified in this act.

SEC. 4. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 880

An act to amend Section 51260 of the Education Code, and to amend Sections 11217, 11795, 11809.3, 11831.5, 11834.17, and 11981 of the Health and Safety Code, relating to alcohol programs.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 51260 of the Education Code is amended to read:

51260. (a) Instruction shall be given in the elementary and secondary schools by appropriately trained instructors on drug education and the effects of the use of tobacco, alcohol, narcotics, dangerous drugs, as defined in Section 11032 of the Health and Safety Code, and other dangerous substances.

For purposes of this chapter, an "appropriately trained instructor" is one who, based upon the determination of the site administrator, demonstrates competencies in interacting in a positive manner with children and youth; demonstrates knowledge of the properties and effects of tobacco, alcohol, narcotics, and dangerous drugs; and who demonstrates skills in conducting affective education, which include

methods and techniques for helping children and youth to freely express ideas and opinions in a responsible manner and to gain an awareness of their values as they affect decisions related to drug use and misuse.

In grades 1 through 6, instruction on drug education should be conducted in conjunction with courses given on health pursuant to subdivision (f) of Section 51210.

In grades 7 to 12, inclusive, instruction on drug education shall be conducted in conjunction with courses given on health or in any appropriate area of study pursuant to Section 51220.

Such instruction shall be sequential in nature and suited to meet the needs of students at their respective grade level.

(b) Services provided under this section shall be in addition to, but shall not be duplicative of, services provided pursuant to Article 2 (commencing with Section 11965) of Part 3 of Division 10.5 of the Health and Safety Code.

SEC. 2. Section 11217 of the Health and Safety Code is amended to read:

11217. No person shall treat an addict for addiction to a narcotic drug except in one of the following:

(a) An institution approved by the State Department of Mental Health, and where the patient is at all times kept under restraint and control.

(b) A city or county jail.

(c) A state prison.

(d) A facility designated by a county and approved by the State Department of Mental Health pursuant to Division 5 (commencing with Section 5000) of the Welfare and Institutions Code.

(e) A state hospital.

(f) A county hospital.

(g) A facility licensed by the State Department of Alcohol and Drug Programs pursuant to Division 10.5 (commencing with Section 11750).

(h) A facility as defined in subdivision (a) or (b) of Section 1250 and Section 1250.3.

Methadone in the continuing treatment of addiction to a controlled substance shall be used only in those programs licensed by the State Department of Alcohol and Drug Programs pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 on either an inpatient or outpatient basis, or both.

This section does not apply during emergency treatment, or where the patient's addiction is complicated by the presence of incurable disease, serious accident, or injury, or the infirmities of old age.

Neither this section nor any other provision of this division shall be construed to prohibit the maintenance of a place in which persons seeking to recover from addiction to a controlled substance reside and endeavor to aid one another and receive aid from others in recovering from such addiction, nor does this section or such division prohibit such aid, provided that no person is treated for addiction in

such place by means of administering, furnishing, or prescribing of controlled substances. The preceding sentence is declaratory of preexisting law.

Neither this section or any other provision of this division shall be construed to prohibit short-term methadone detoxification treatment in a controlled setting approved by the director and pursuant to rules and regulations of the director. Facilities and treatment approved by the director under this paragraph shall not be subject to approval or inspection by the Board of Medical Quality Assurance, nor shall persons in such facilities be required to register with, or report the termination of residence with, the police department or sheriff's office.

SEC. 3. Section 11795 of the Health and Safety Code is amended to read:

11795. (a) The board of supervisors of each county may apply to the department for funds for the purpose of alleviating problems in its county related to the inappropriate use of alcoholic beverages. The provisions of this part shall be applicable only to counties electing to apply for state or federal alcohol funds allocated by the department under this part.

(b) The Legislature grants responsibility to the county to administer and coordinate all county alcohol programs funded under this part. County alcohol programs shall be held accountable to the board of supervisors and to the state for their effective implementation. The Legislature further grants the responsibility to the county to establish its own priorities for alcohol programs funded under the provisions of this part. However, each county shall allocate and expend no less than the federally required percentage of federal funds for prevention and early intervention activities as defined in this part.

SEC. 4. Section 11809.3 of the Health and Safety Code is amended to read:

11809.3. In the event the alcohol program administrator and advisory board disagree regarding the development of, or implementation of, any element of the county alcohol plan and budget, or any related matter, the advisory board may designate a representative to report to, or make a presentation before, the board of supervisors relating to the disagreement.

SEC. 5. Section 11831.5 of the Health and Safety Code is amended to read:

11831.5. (a) Certification shall be granted by the department pursuant to this section to any alcoholism program wishing to receive, and requesting, the certification regardless of the source of the program's funding.

(b) The purposes of certification under this section shall be all of the following:

(1) To identify programs which exceed minimal levels of service quality, are in substantial compliance with the department's standards, and merit the confidence of the public, third party payers,

and county alcohol programs.

(2) To encourage programs to strive for increased quality of service through recognition by the state and by peer programs in the alcoholism field.

(3) To assist programs to identify their needs for technical assistance, training, and program improvements.

(c) Certification may be granted under this section on the basis of evidence satisfactory to the department that the requesting alcoholism program has an accreditation by a statewide or national alcohol program accrediting body. The accrediting body shall be one whose accreditation meets or exceeds the department's standards and which is recognized by the department.

(d) No fee shall be levied by the department for certification of nonprofit organizations or local governmental entities under this section.

(e) Certification, or the lack thereof, shall not convey any approval or disapproval by the department, but shall be for information purposes only.

(f) The standards developed pursuant to Section 11830 and the certification under this section shall satisfy the requirements of Section 1463.16 of the Penal Code.

SEC. 6. Section 11834.17 of the Health and Safety Code is amended to read:

11834.17. No city, county, city and county, or district shall adopt or enforce any building ordinance or local rule or regulations relating to the subject of fire and life safety in alcoholism recovery facilities which is more restrictive than those standards adopted by the State Fire Marshal.

SEC. 7. Section 11981 of the Health and Safety Code is amended to read:

11981. (a) The board of supervisors of each county may apply to the department for funds for the purpose of alleviating problems in its county related to drug abuse. This part shall be applicable only to counties electing to apply for state or federal drug funds allocated by the department under this part.

(b) The state department shall coordinate state and local drug abuse prevention, care, treatment, and rehabilitation programs. It is the intent of the Legislature that the department and the counties maintain a cooperative partnership to assure effective implementation of this division.

CHAPTER 881

An act to amend, repeal, and add Sections 11102, 11105.1, 11105.2, 11105.3, 11106, 11107, 11108, 11108.5, 11110, 11110.2, 11110.5, 11111, 11111.5, and 11116 of, to add Sections 111, 111.3, 111.5, 11100.1, 11103.1, 11104.3, 11104.6, and 11105.6 to, and to add Chapter 6 (commencing with Section 38500) to Division 16.5 of, the Vehicle Code, relating to vehicles, and making an appropriation therefor.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 111 is added to the Vehicle Code, to read:

111. "All-terrain vehicle" means a motor vehicle subject to subdivision (a) of Section 38010 which is all of the following:

(a) Designed for operation off of the highway by an operator with no passengers.

(b) Fifty inches or less in width.

(c) Six hundred pounds or less unladen weight.

(d) Suspended on three or more low-pressure tires.

(e) Has a single seat designed to be straddled by the operator.

(f) Has handlebars for steering control.

SEC. 2. Section 111.3 is added to the Vehicle Code, to read:

111.3. An "all-terrain vehicle safety instructor" is a person who is sponsored by an all-terrain vehicle safety training organization, who has completed a course in all-terrain vehicle safety instruction administered by an approved all-terrain vehicle safety training organization, and who has been licensed by the department pursuant to Section 11105.1.

SEC. 3. Section 111.5 is added to the Vehicle Code, to read:

111.5. An "all-terrain vehicle safety training organization" is any organization which is approved to offer a program of instruction in all-terrain vehicle safety, including all-terrain vehicle safety instruction training, by the Off-Highway Vehicle Safety Education Committee and which has been issued a license by the department pursuant to Section 11105.6.

SEC. 4. Section 11100.1 is added to the Vehicle Code, to read:

11100.1. No person who instructs others in the operation of all-terrain vehicles shall represent that the instruction given satisfies the requirements of Sections 38503 and 38504, and no certificate shall be issued or awarded for participation in all-terrain vehicle safety instruction unless the instruction is conducted by a licensed all-terrain vehicle safety instructor who is sponsored by an all-terrain vehicle safety training organization.

This section shall become operative on July 1, 1988.

SEC. 5. Section 11102 of the Vehicle Code is amended to read:

11102. (a) A driving school owner 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 himself or herself or another substantially, or to injure another substantially; or has not committed any act which, if done as a licensed driving school owner, would be grounds for the suspension or revocation of the license. A conviction after a plea of nolo contendere shall be deemed to be a conviction within the meaning of this section.

(2) Maintain an established place of business open to the public. No office or place of business shall be situated within 500 feet of any building used by the department as an office, unless the owner was established at such location on or before January 1, 1976.

(3) Have the proper equipment necessary to giving instruction in the operation of the class of vehicles for which the course is designed.

(4) Procure and file with the department a bond in the amount of two thousand dollars ($2,000) executed by an admitted surety insurer and conditioned that the applicant shall not practice any fraud or make any fraudulent representation which will cause a monetary loss to a person taking instruction from the applicant.

(5) Meet the requirements of Section 11102.5 and 11105.2. If the owner is not the operator of the driving school, the owner shall designate an operator who shall meet the requirements of Section 11102.5.

(6) File with the department a good and sufficient instrument in writing in which the owner shall appoint the director as the true and lawful agent of the applicant upon whom all process may be served in any action, or actions, which may thereafter be commenced against the applicant, arising out of any claim for damages suffered by any firm, person, association, or out of any claim for damages suffered by any firm, person, association, or corporation by reason of the violation of the applicant of any of the terms and provisions of this code or any condition of the driving school owner's bond. The applicant shall stipulate and agree in such appointment that any process directed to the applicant, when personal service of process upon him or her cannot be made in this state after due diligence, in such a case which is served upon the director, or in the event of the director's absence from the office, upon any employee in charge of the office of the director, shall be of the same legal force and effect as if served upon the applicant personally. The applicant shall further stipulate and agree in writing that the agency created by the appointment shall continue for and during the period covered by the license and so long thereafter as the applicant may be made to answer in damages for a violation of this code or any condition of the bond. The instrument appointing the director as agent for the applicant for service of process shall be acknowledged by the applicant before a notary public. In any case wherein the licensee is served with process by service thereof upon the director, one copy of the summons and complaint shall be left with the director or in the director's office in Sacramento or mailed to the office of the

director in Sacramento. A fee of five dollars ($5) shall also be paid to the director at the time of service of the copy of the summons and complaint. The service on the director shall be a sufficient service on the licensee; provided, that a notice of the service and a copy of the summons and complaint shall be forthwith sent by registered mail by the plaintiff or his or her attorney to the licensee. A copy of the summons and complaint shall be mailed by the plaintiff or his attorney to the surety of the applicant's bond at the address of the surety given in the bond, postpaid and registered with request for return receipt. The director shall keep a record of all process so served upon him or her which record shall show the day and hour of service and shall retain the summons and complaint so served on the licensee on file. Where the licensee is served with process by service thereof upon the director, the licensee shall be allowed 30 days from and after the service thereof within which to answer any complaint or other pleading which may be filed in the cause; and provided, further, that for purposes of venue, where the licensee is served with process by service thereof upon the director, the service shall be deemed to have been made upon the licensee in the county in which the licensee has or last had his or her established place of business.

(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.

(c) This section shall remain in effect only until July 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1988, deletes or extends that date.

SEC. 6. Section 11102 is added to the Vehicle Code, to read:

11102. (a) A driving school owner or the principal in an all-terrain vehicle safety training organization 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 himself or herself or another substantially, or to injure another substantially; or has not committed any act which, if done as a licensed driving school owner or as the principal of an all-terrain vehicle safety training organization, would be grounds for the suspension or revocation of the license. A conviction after a plea of nolo contendere shall be deemed to be a conviction within the meaning of this section.

(2) Maintain an established place of business open to the public. No office or place of business shall be situated within 500 feet of any building used by the department as an office, unless the owner was established at that location on or before January 1, 1976.

(3) Have the proper equipment necessary to giving instruction in the operation of the class of vehicles for which the course is designed.

(4) Procure and file with the department a bond in the amount of two thousand dollars ($2,000) executed by an admitted surety insurer and conditioned that the applicant shall not practice any fraud or make any fraudulent representation which will cause a

monetary loss to a person taking instruction from the applicant.

(5) Meet the requirements of Section 11105.2 and, if the person is the owner of a driving school, meet the requirements of Section 11102.5. If the owner is not the operator of the driving school, the owner shall designate an operator who shall meet the requirements of Section 11102.5.

(6) File with the department a good and sufficient instrument, in writing, in which the owner shall appoint the director as the true and lawful agent of the applicant upon whom all process may be served in any action, or actions, which may thereafter be commenced against the applicant, arising out of any claim for damages suffered by any firm, person, association, or out of any claim for damages suffered by any firm, person, association, or corporation by reason of the violation of the applicant of any of the terms and provisions of this code or any condition of the school owner's bond. The applicant shall stipulate and agree in the appointment that any process directed to the applicant, when personal service of process upon the applicant cannot be made in this state after due diligence, the process may be served upon the director or, if the director is absent from the office, upon any employee in charge of the office of the director, in which case the service shall be of the same legal force and effect as if served upon the applicant personally. The applicant shall further stipulate and agree in writing that the agency created by the appointment shall continue for and during the period covered by the license and so long thereafter as the applicant may be made to answer in damages for a violation of this code or any condition of the bond. The instrument appointing the director as agent for the applicant for service of process shall be acknowledged by the applicant before a notary public. In any case in which the licensee is served with process by service upon the director, one copy of the summons and complaint shall be left with the director or in the director's office in Sacramento or mailed to the office of the director in Sacramento. A fee of five dollars ($5) shall also be paid to the director at the time of service of the copy of the summons and complaint. The service on the director shall be a sufficient service on the licensee if the plaintiff or the plaintiff's attorney also, on the same day, sends notice of the service and a copy of the summons and complaint by registered mail to the licensee. A copy of the summons and complaint shall be mailed by the plaintiff or his or her attorney to the surety of the applicant's bond at the address of the surety given in the bond, postpaid and registered with request for return receipt. The director shall keep a record of all process served upon the director under this paragraph, which record shall show the day and hour of service, and the director shall retain the summons and complaint served on file. If the licensee is served with process by service thereof upon the director, the licensee shall be allowed 30 days from and after the service thereof within which to answer any complaint or other pleading which may be filed in the cause. For purposes of venue, if the licensee is served with process by service

thereof upon the director, the service shall be deemed to have been made upon the licensee in the county in which the licensee has or last had the licensee's established place of business.

(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.

(c) This section shall become operative on July 1, 1988.

SEC. 7. Section 11103.1 is added to the Vehicle Code, to read:

11103.1. An all-terrain vehicle safety training organization shall maintain bodily injury and property damage liability insurance on motor vehicles while being used in all-terrain vehicle safety instruction, insuring the liability of the organization, the instructors, and any person taking instruction in at least the following amounts:

(a) One hundred fifty thousand dollars ($150,000) for bodily injury to or death of one person in any one accident.

(b) Subject to the limit specified in paragraph (1) for one person, three hundred thousand dollars ($300,000) for bodily injury to or death of two or more persons in any one accident.

(c) Fifty thousand dollars ($50,000) for damage to property of others in any one accident.

This section shall become operative on July 1, 1988.

SEC. 8. Section 11104.3 is added to the Vehicle Code, to read:

11104.3. (a) An all-terrain vehicle safety instructor 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 himself or herself or another substantially, or to injure another substantially; or has not committed any act which, if done as an all-terrain vehicle safety instructor, would be grounds for the suspension or revocation of the all-terrain vehicle safety instructor's license. A conviction after a plea of nolo contendere shall be deemed to be a conviction within the meaning of this section.

(2) Have a high school education or its equivalent and have satisfactorily completed a course of instruction training in all-terrain vehicle safety as approved by the Off-Highway Vehicle Safety Education Committee.

(3) Within three attempts, pass the examination that the department shall require on off-highway vehicle laws, safe driving practices, operation of all-terrain vehicles, and teaching methods and techniques.

(4) Be physically able to safely operate a motor vehicle and to train others in the operation of all-terrain vehicles.

(5) Hold a valid California driver's license.

(6) Not be on probation to the department as a negligent operator.

(7) Have a driver record which does not have an outstanding notice for violating a written promise to appear in court or for willfully failing to pay a lawfully imposed fine, as provided in Section 40509 or 40509.5.

(8) Be 18 years of age or older.

(9) Be sponsored by an all-terrain vehicle safety training organization.

(b) The qualifying requirements in this section shall be met within one year from the date of application for a license, or a new application, examination, and a fee shall be required.

(c) This section shall become operative on July 1, 1988.

SEC. 9. Section 11104.6 is added to the Vehicle Code, to read:

11104.6. Each applicant for a license or for renewal of a license under this chapter shall submit an application to the department on the forms prescribed by the department. The applicant shall provide the department any information concerning the applicant's character, honesty, integrity, and reputation which the department considers to be necessary.

This section shall become operative on July 1, 1988.

SEC. 10. Section 11105.1 of the Vehicle Code, as amended by Chapter 111 of the Statutes of 1987, is amended to read:

11105.1. (a) The department shall issue a license certificate to each driving school instructor when it is satisfied that he or she has met the qualifications required under this chapter. The original driving school instructor license and any driving school instructor license renewed pursuant to subdivisions (b) and (c) shall be valid for a period of three years from the date of issuance unless canceled, suspended, or revoked by the department.

(b) Every application for the renewal of a driving school instructor license may be made by the licensee prior to the expiration date of the license by presenting the application form provided by the department. In no event shall a driving school instructor renew the license after the date of expiration.

The department shall require all of the following for the renewal of the license:

(1) Compliance with Section 11104, except subdivision (c) thereof, and with 11105.2.

(2) Satisfactory completion of an examination as provided in Section 11104 at least once during each succeeding three-year period after the initial issuance of a license certificate.

In lieu of any examination for renewal of the license, the department may accept submission by the licensee of evidence of continuing professional education as defined in paragraph (2) of subdivision (b) of Section 11105.

(c) The department may issue a probationary license and certificate subject to conditions to be observed by the licensee in the exercise of the privilege granted. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license or certificate, but shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

(d) This section shall remain in effect only until July 1, 1988, and

as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1988, deletes or extends that date.

SEC. 11. Section 11105.1 is added to the Vehicle Code, to read:

11105.1. (a) The department shall issue a license certificate to each driving school instructor and to each all-terrain vehicle safety instructor when it is satisfied that the person has met the qualifications required under this chapter. The original instructor's license and any instructor's license renewed pursuant to subdivisions (b) and (c) is valid for three years from the date issued unless canceled, suspended, or revoked by the department.

(b) A licensee may apply for the renewal of an instructor's license prior to the expiration date of the license. In no event shall an instructor renew the license after the date of expiration.

(c) The department shall require all of the following for the renewal of the instructor's license:

(1) Compliance with Section 11104, except subdivision (c) thereof, for a driving school instructor, or compliance with Section 11104.3, except paragraph (3) of subdivision (a) thereof, for an all-terrain vehicle safety instructor, and, for either, compliance with Section 11105.2.

(2) Satisfactory completion of an examination as provided in Section 11104 or 11104.3, as applicable, at least once during each succeeding three-year period after the initial issuance of an instructor license certificate.

In lieu of any examination for renewal of the license, the department may accept submission by the licensee of evidence of continuing professional education as defined in paragraph (2) of subdivision (b) of Section 11105.

(d) The department may issue a probationary instructor's license and certificate subject to conditions to be observed by the licensee in the exercise of the privilege granted. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license or certificate, but shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

(e) This section shall become operative on July 1, 1988.

SEC. 12. Section 11105.2 of the Vehicle Code is amended to read:

11105.2. (a) The fee for a license issued to a driving school owner shall be as follows:

(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 fifty dollars ($50).

(3) If an alteration of an existing license is caused by a firm name change, a change in corporate officer structure, address change, or the addition of a branch location, a fee of seventy dollars ($70).

(4) For replacement of the license when the original license is

lost, stolen, or mutilated, a fee of fifteen dollars ($15).

(b) The fee for a license issued to a driving school operator shall be as follows:

(1) For the original license a nonrefundable fee of one hundred dollars ($100).

(2) For the annual renewal of a license, a fee of one hundred dollars ($100).

(3) If an alteration of an existing license is caused by a change in school name or location, or the addition of a branch location, a fee of fifteen dollars ($15).

(4) For replacement of the license when the original license is lost, stolen, or mutilated, a fee of fifteen dollars ($15).

(c) The fee for a license issued to a driving school instructor shall be as follows:

(1) For the original license, except as provided by Section 42231, a nonrefundable fee of thirty dollars ($30).

(2) For the triennial renewal of a license, a fee of thirty dollars ($30).

(3) If an alteration of an existing license is caused by a change in the instructor's employing school's name or location, or transfer of the instructor's license to another employing driving school, a fee of fifteen dollars ($15).

(4) For the replacement of the instructor's license when the original license is lost, stolen, or mutilated, a fee of fifteen dollars ($15).

(d) This section shall remain in effect only until July 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1988, deletes or extends that date.

SEC. 13. Section 11105.2 is added to the Vehicle Code, to read:

11105.2. (a) The fee for a license issued to a driving school owner or to an all-terrain vehicle safety training organization shall be as follows:

(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 fifty dollars ($50).

(3) If an alteration of an existing license is caused by a firm name change, a change in corporate officer structure, address change, or the addition of a branch location, a fee of seventy dollars ($70).

(4) For replacement of the license when the original license is lost, stolen, or mutilated, a fee of fifteen dollars ($15).

(b) The fee for a license issued to a driving school operator shall be as follows:

(1) For the original license a nonrefundable fee of one hundred dollars ($100).

(2) For the annual renewal of a license, a fee of one hundred dollars ($100).

(3) If an alteration of an existing license is caused by a change in school name or location, or the addition of a branch location, a fee

of fifteen dollars ($15).

(4) For replacement of the license when the original license is lost, stolen, or mutilated, a fee of fifteen dollars ($15).

(c) The fee for a license issued to a driving school instructor or to an all-terrain vehicle safety instructor shall be as follows:

(1) For the original license, except as provided by Section 42231, a nonrefundable fee of thirty dollars ($30).

(2) For the triennial renewal of a license, a fee of thirty dollars ($30).

(3) If an alteration of an existing license is caused by a change in the instructor's employing school's name or location, or transfer of the instructor's license to another employing school, a fee of fifteen dollars ($15).

(4) For the replacement of the instructor's license when the original license is lost, stolen, or mutilated, a fee of fifteen dollars ($15).

(d) This section shall become operative on July 1, 1988.

SEC. 14. Section 11105.3 of the Vehicle Code is amended to read:

11105.3. Any driving school owner, operator, or instructor required to be licensed under this chapter who fails to renew such license prior to the expiration of the license in accordance with Sections 11105 and 11105.1 and whose license was not canceled, suspended, or revoked by the department at the time of expiration, may reapply for an original license pursuant to Section 11102, 11102.5, or 11104.

This section shall remain in effect only until July 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1988, deletes or extends that date.

SEC. 15. Section 11105.3 is added to the Vehicle Code, to read:

11105.3. Any school owner, operator, or instructor required to be licensed under this chapter who fails to renew the license prior to the expiration of the license in accordance with Sections 11105 and 11105.1 and whose license was not canceled, suspended, or revoked by the department at the time of expiration, may reapply for an original license pursuant to Section 11102, 11102.5, 11104, or 11104.3.

This section shall become operative on July 1, 1988.

SEC. 16. Section 11105.6 is added to the Vehicle Code, to read:

11105.6. (a) The department shall issue a license to an all-terrain vehicle safety training organization when the department is satisfied that the organization has met the qualifications required under this chapter and has been approved and certified by the Off-Highway Vehicle Safety Education Committee. The license shall be valid for a period of one year from midnight of the last day of the month of issuance unless canceled, suspended, or revoked by the department.

(b) The license shall be renewed annually. The department shall require compliance with Sections 11102 and 11105.2 for the renewal of the license.

(c) This section shall become operative on July 1, 1988.

SEC. 17. Section 11106 of the Vehicle Code is amended to read:

11106. (a) Pending the satisfaction of the department that the applicant has met the requirements under this chapter, it may issue a temporary permit to any person applying for a license issued pursuant to this chapter. The temporary permit shall permit the operation of a driving school or the giving of instruction for a period not to exceed 120 days while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant for the license.

(b) A temporary permit valid for 30 days may be issued to any applicant for an original driving instructor's license pending satisfactory completion of the course required by subdivision (b) of Section 11104. This subdivision shall not be construed as extending the period of validity of any temporary permit issued pursuant to subdivision (a).

(c) The department may cancel such temporary permit when it has determined or has reasonable cause to believe that the application is incorrect or incomplete or the temporary permit was issued in error. Such temporary permit shall be invalid when canceled or when the applicant's license has been issued or refused.

(d) This section shall remain in effect only until July 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1988, deletes or extends that date.

SEC. 18. Section 11106 is added to the Vehicle Code, to read:

11106. (a) Until the department is satisfied that the applicant has met the requirements under this chapter, it may issue a temporary permit to any person applying for a license issued pursuant to this chapter. The temporary permit authorizes the operation of a school or the giving of instruction for a period not to exceed 120 days while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant for the license.

(b) A temporary permit valid for 30 days may be issued to any applicant for an original instructor's license pending satisfactory completion of the course required by subdivision (b) of Section 11104 or paragraph 2 of subdivision (a) of Section 11104.3, as applicable. This subdivision does not extend the period of validity of any temporary permit issued pursuant to subdivision (a).

(c) The department may cancel a temporary permit when it has determined, or has reasonable cause to believe, that the application is incorrect or incomplete or the temporary permit was issued in error. A temporary permit is invalid when canceled or when the applicant's license has been issued or refused.

(d) This section shall become operative on July 1, 1988.

SEC. 19. Section 11107 of the Vehicle Code is amended to read:

11107. (a) The department may refuse to issue a license certificate to any applicant to own or operate a driving school or to any driving instructor when it is satisfied that:

(1) The applicant has not met the qualifications required under this chapter.

(2) The applicant was previously the holder of a license under this

chapter, which was revoked or suspended, which license in the case of revocation was never reissued by the department, or which in the case of suspension was never reinstated.

(3) The applicant has done any act or series of acts which would be a cause for suspension or revocation under Section 11110.

(4) If the applicant is a partnership or corporation, one or more of the limited or general partners, stockholders, directors, or officers, was the holder of a revoked or suspended license previously issued under this chapter, which license in the case of revocation was never reissued or in the case of suspension was never reinstated, or one or more of such partners, stockholders, directors, or officers, as the case may be, though not previously the holder of a license, has done any act or series of acts which would be a cause for revocation or suspension under Section 11110.

(5) By reason of the facts and circumstances touching the organization, control, and management of the partnership or corporation, it is likely that the policy or operation of the business will be directed, controlled, or managed by an individual who by reason of the act, series of acts, or conduct described in subparagraphs (3) and (4) above, would be ineligible for a license and that by licensing the corporation or partnership the purposes of this division would likely be defeated.

(6) The applicant has knowingly made a false statement or knowingly concealed a material fact in applying for a license.

(b) Upon refusal of the department to issue a license, the applicant shall be entitled to demand in writing a hearing before the director or his representative within 60 days after notice of refusal.

The hearing shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A person whose license has been revoked or application for a license has been refused may reapply for such license after a period of not less than one year has elapsed from the effective date of the decision revoking the license or refusing the application.

(d) This section shall remain in effect only until July 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1988, deletes or extends that date.

SEC. 20. Section 11107 is added to the Vehicle Code, to read:

11107. (a) The department may refuse to issue a license certificate under this chapter to any applicant to own or operate a school or to any instructor when it is satisfied that:

(1) The applicant has not met the qualifications required under this chapter.

(2) The applicant was previously the holder of a license under this chapter, which was revoked or suspended, which license was never reissued by the department after revocation, or which license was never reinstated after suspension.

(3) The applicant has done any act or series of acts which would be a cause for suspension or revocation under Section 11110.

(4) If the applicant is a partnership or corporation, one or more of the limited or general partners, stockholders, directors, or officers, was the holder of a revoked or suspended license previously issued under this chapter, which license was never reissued after revocation or which license was never reinstated after suspension, or one or more of the partners, stockholders, directors, or officers, as the case may be, though not previously the holder of a license, has done any act or series of acts which would be a cause for revocation or suspension under Section 11110.

(5) By reason of the facts and circumstances touching the organization, control, and management of the partnership or corporation, it is likely that the policy or operation of the business will be directed, controlled, or managed by an individual who, by reason of the act, series of acts, or conduct described in paragraphs (3) and (4), would be ineligible for a license and that by licensing the corporation or partnership the purposes of this division would likely be defeated.

(6) The applicant has knowingly made a false statement or knowingly concealed a material fact in applying for a license.

(b) Upon refusal of the department to issue a license, the applicant may demand, in writing, a hearing before the director or the director's representative within 60 days after notice of refusal. The hearing shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A person whose license has been revoked or whose application for a license has been refused may reapply for the license after a period of not less than one year has elapsed from the effective date of the decision revoking the license or refusing the application.

(d) This section shall become operative on July 1, 1988.

SEC. 21. Section 11108 of the Vehicle Code is amended to read:

11108. (a) Every person licensed under this chapter shall keep a record showing all of the following:

(1) The name and address and license number of the school.

(2) The name and address of each person given instruction.

(3) The instruction permit number or driver's license number of every person given instruction in the driving of a motor vehicle.

(4) The date any such instruction permit was issued.

(5) The name and instructor's license number of each driving instructor.

(6) The particular type of instruction given and the date of such instruction.

(7) The amount of time devoted to each type of instruction.

(8) The total number of hours of instruction.

(9) The total cost to the student of such instruction.

(b) The records shall be retained for a minimum of three years and shall be open to the inspection of the department at all reasonable times, but shall be only for the confidential use of the department.

(c) Whenever the licensee suspends or terminates the licensed activity, the licensee shall surrender the records to the department for examination not later than the end of the third day, excluding Saturdays, Sundays, legal holidays, after the date of suspension or termination. The department may duplicate or make a record of any information contained therein. All such records shall be returned to the licensee not later than 30 days after the date of surrender.

(d) This section shall remain in effect only until July 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1988, deletes or extends that date.

SEC. 22. Section 11108 is added to the Vehicle Code, to read:

11108. (a) Every person licensed under this chapter shall keep a record showing all of the following:

(1) The name and address and license number of the school.

(2) The name and address of each person given instruction.

(3) Excepting all-terrain vehicle safety training organizations, the instruction permit number or driver's license number of every person given instruction in the driving of a motor vehicle.

(4) Excepting all-terrain vehicle safety training organizations, the date any instruction permit was issued.

(5) The name and instructor's license number of each instructor.

(6) The particular type of instruction given and the date of the instruction.

(7) The amount of time devoted to each type of instruction.

(8) The total number of hours of instruction.

(9) The total cost to the student of the instruction.

(b) The records shall be retained for at least three years and shall be open to the inspection of the department at all reasonable times, but shall be only for the confidential use of the department.

(c) Whenever the licensee suspends or terminates the licensed activity, the licensee shall surrender the records to the department for examination not later than the end of the third day, excluding Saturdays, Sundays, and legal holidays, after the date of suspension or termination. The department may duplicate or make a record of any information contained in the licensee's records. All of the licensee's records shall be returned to the licensee not later than 30 days after the date of surrender.

(d) Every all-terrain vehicle safety training organization shall maintain records for all-terrain vehicle safety instructors who are authorized to offer that organization's courses of instruction.

(e) Each all-terrain vehicle safety instructor shall report the information required under this section to the all-terrain vehicle safety training organization no later than the 15th day of the month following the date instruction was provided. Instructors shall notify the organization, which shall, in turn, notify the department at least 30 days in advance of providing a course of instruction, of the time, date, location, and type of instruction to be given.

(f) This section shall become operative on July 1, 1988.

SEC. 23. Section 11108.5 of the Vehicle Code is amended to read:

11108.5. (a) Every driving school owner licensed pursuant to Section 11105 shall notify the department within 10 days of any change in the ownership or corporate structure of the licensee.

(b) Every driving school owner licensed pursuant to Section 11105 shall immediately notify the department upon changing the site or location of the driving school's established place of business.

(c) Every driving school operator and driving instructor licensed pursuant to Sections 11105 and 11105.1 shall report to the department every change of residence address within five days of the change.

(d) This section shall remain in effect only until July 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1988, deletes or extends that date.

SEC. 24. Section 11108.5 is added to the Vehicle Code, to read:

11108.5. (a) Every school owner licensed pursuant to this chapter shall notify the department within 10 days of any change in the ownership or corporate structure of the licensee.

(b) Every school owner licensed pursuant to this chapter shall immediately notify the department upon changing the site or location of the school's established place of business.

(c) Every school operator and every instructor licensed pursuant to this chapter shall report to the department every change of residence address within five days of the change.

(d) This section shall become operative on July 1, 1988.

SEC. 25. Section 11110 of the Vehicle Code is amended to read:

11110. The department, after notice and hearing, may suspend or revoke any license issued under this chapter in any of the following cases:

(a) The department is satisfied that the licensee fails to meet the requirements to receive or hold a license under this chapter.

(b) The licensee fails to keep the records required by this chapter.

(c) The licensee permits fraud or engages in fraudulent practices either with reference to the applicant or the department, or induces or countenances fraud or fraudulent practices on the part of any applicant for a driver's license.

(d) The licensee fails to comply with any provisions of this chapter or any of the regulations or requirements of the department adopted pursuant thereto.

(e) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or which would reasonably have the effect of leading persons to believe, that the licensee was in fact an employee or representative of the department, or the licensee makes an advertisement, in any manner or by any means, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(f) The licensee, or any employee or agent of the licensee, solicits driver training or instruction in, or within 200 feet of, an office of the department.

(g) The licensee is convicted of violating Section 14606, 20001,

20002, 20003, 20004, 20006, 20008, 23103, 23104, 23152, or 23153 of this code or subdivision 3 of Section 192 of the Penal Code. A conviction, after a plea of nolo contendere, is a conviction within the meaning of this section.

(h) The licensee does any act or series of acts, or is guilty of conduct, which action or conduct manifests a disability or unfitness to perform properly the licensee's occupational duties. If disability or unfitness to perform properly the occupational duties of the licensee is the basis of suspension or revocation, the referee, hearing officer, or department shall make a specific finding as to the manner in which the action or conduct manifests disability or unfitness, which finding shall be incorporated in the order suspending or revoking the license.

(i) Contrary to provisions of this code or of regulations adopted by the department, the licensee teaches or permits a student to be taught the specific tests administered by the department through use of the department's forms or testing facilities.

(j) The licensee conducts driver training, or permits driver training by any employee, in an unsafe manner or contrary to safe driving practices.

(k) The licensed driving school owner or licensed driving school operator teaches or permits an employee to teach driving instruction without a valid driving instructor's license.

(*l*) The licensed driving school owner does not have in effect a bond as provided in Section 11102.

(m) The licensee permits the use of the license by any other person for the purpose of permitting that person to engage in the ownership or operation of a driving school or in the giving of driving instruction for compensation.

This section shall remain in effect only until July 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1988, deletes or extends that date.

SEC. 26. Section 11110 is added to the Vehicle Code, to read:

11110. The department, after notice and hearing, may suspend or revoke any license issued under this chapter in any of the following cases:

(a) The department is satisfied that the licensee fails to meet the requirements to receive or hold a license under this chapter.

(b) The licensee fails to keep the records required by this chapter.

(c) The licensee permits fraud or engages in fraudulent practices either with reference to the applicant or the department, or induces or countenances fraud or fraudulent practices on the part of any applicant for a driver's license or an all-terrain vehicle safety certificate.

(d) The licensee fails to comply with any provisions of this chapter or any of the regulations or requirements of the department adopted pursuant thereto.

(e) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create

the impression, or which would reasonably have the effect of leading persons to believe, that the licensee was in fact an employee or representative of the department, or the licensee makes an advertisement, in any manner or by any means, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(f) The licensee, or any employee or agent of the licensee, solicits driver training or instruction or all-terrain vehicle safety instruction in, or within 200 feet of, an office of the department.

(g) The licensee is convicted of violating Section 14606, 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23152, or 23153 of this code or subdivision (c) of Section 192 of the Penal Code. A conviction, after a plea of nolo contendere, is a conviction within the meaning of this section.

(h) The licensee does any act or series of acts, or is guilty of conduct, which action or conduct manifests a disability or unfitness to perform properly the licensee's occupational duties. If disability or unfitness to perform properly the occupational duties of the licensee is the basis of suspension or revocation, the referee, hearing officer, or department shall make a specific finding as to the manner in which the action or conduct manifests disability or unfitness, which finding shall be incorporated in the order suspending or revoking the license.

(i) Contrary to provisions of this code or of regulations adopted by the department, the licensee teaches or permits a student to be taught the specific tests administered by the department through use of the department's forms or testing facilities.

(j) The licensee conducts training, or permits training by any employee, in an unsafe manner or contrary to safe driving practices.

(k) The licensed school owner or licensed driving school operator teaches or permits an employee to teach driving instruction or all-terrain vehicle safety instruction without a valid instructor's license.

(*l*) The licensed school owner does not have in effect a bond as provided in Section 11102.

(m) The licensee permits the use of the license by any other person for the purpose of permitting that person to engage in the ownership or operation of a school or in the giving of driving instruction or all-terrain vehicle safety instruction for compensation.

(n) This section shall become operative on July 1, 1988.

SEC. 27. Section 11110.2 of the Vehicle Code is amended to read:

11110.2. The license issued to a driving school owner shall be canceled upon suspension or cancellation of the corporate charter of the licensee by the state.

This section shall remain in effect only until July 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1988, deletes or extends that date.

SEC. 28. Section 11110.2 is added to the Vehicle Code, to read:

11110.2. (a) The license issued to a school owner shall be

canceled upon suspension or cancellation of the corporate charter of the licensee by the state.

(b) This section shall become operative on July 1, 1988.

SEC. 29. Section 11110.5 of the Vehicle Code is amended to read:

11110.5. The department may cancel any license issued under the provisions of this chapter when such license has been issued in error or voluntarily surrendered to the department for cancellation. Whenever a driving school operator's license or a driving instructor's license is canceled, it shall be without prejudice and shall be surrendered to the department. Any person whose license has been canceled may immediately apply for a license and such application may be accepted without additional fee or examination under rules and regulations adopted by the department.

This section shall remain in effect only until July 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1988, deletes or extends that date.

SEC. 30. Section 11110.5 is added to the Vehicle Code, to read:

11110.5. The department may cancel any license issued under this chapter when that license has been issued in error or voluntarily surrendered to the department for cancellation. Whenever a driving school operator's license or an instructor's license is canceled, it shall be without prejudice and shall be surrendered to the department. Any person whose license has been canceled may immediately apply for a license, and the application may be accepted without additional fee or examination under rules and regulations adopted by the department.

This section shall become operative on July 1, 1988.

SEC. 31. Section 11111 of the Vehicle Code is amended to read:

11111. (a) Every licensee under this chapter is entitled to notice and hearing prior to cancellation, suspension, or revocation of the license by the department, except that the department shall immediately cancel the license without a hearing for failure of the licensee to meet and maintain the requirements of paragraph (2), (4), or (5) of subdivision (a) of Section 11102, or Section 11103, or subdivision (e), (f), or (g) of Section 11104, or Section 11110.2.

(b) The notice and hearings provided for in this chapter shall be pursuant to and governed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Any action of the department in suspending, canceling, or revoking, or failing to renew a license may be reviewed by any court of competent jurisdiction.

(d) The department may, pending a hearing, temporarily suspend the license or permit of any driving school owner, driving school operator, or driving instructor for a period not to exceed 30 days if the director finds that the action is required in the public interest. In that case, a hearing shall be held and a decision thereon issued within 30 days after notice of temporary suspension.

(e) The suspension, expiration, or cancellation of a license issued under this chapter does not prevent the filing of an accusation for the

revocation or suspension of the suspended, expired, or canceled license as provided in Section 11110, and does not invalidate or otherwise preclude a decision by the department that the license should be suspended or revoked. That determination may be considered in granting or refusing to grant any subsequent license authorized by this chapter to the same licensee, or to any partner, officer, director, or stockholder of the same licensee.

(f) This section shall remain in effect only until July 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1988, deletes or extends that date.

SEC. 32. Section 11111 is added to the Vehicle Code, to read:

11111. (a) Every licensee under this chapter is entitled to notice and hearing prior to cancellation, suspension, or revocation of the license by the department, except that the department shall immediately cancel the license without a hearing for failure of the licensee to meet and maintain the requirements of paragraph (2), (4), or (5) of subdivision (a) of Section 11102, or Section 11103 or 11103.1, or paragraph (5), (6), or (7) of subdivision (a) of Section 11104, or subdivision (e), (f), or (g) of Section 11104.3, or Section 11110.2.

(b) The notice and hearings provided for in this chapter shall be pursuant to and governed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Any action of the department in suspending, canceling, or revoking, or failing to renew a license may be reviewed by any court of competent jurisdiction.

(d) The department may, pending a hearing, temporarily suspend the license or permit of any person licensed under this chapter for a period not to exceed 30 days if the director finds that the action is required in the public interest. In that case, a hearing shall be held and a decision thereon issued within 30 days after notice of temporary suspension.

(e) The suspension, expiration, or cancellation of a license issued under this chapter does not prevent the filing of an accusation for the revocation or suspension of the suspended, expired, or canceled license as provided in Section 11110, and does not invalidate or otherwise preclude a decision by the department that the license should be suspended or revoked. That determination may be considered in granting or refusing to grant any subsequent license authorized by this chapter to the same licensee, or to any partner, officer, director, or stockholder of the same licensee.

(f) This section shall become operative on July 1, 1988.

SEC. 33. Section 11111.5 of the Vehicle Code is amended to read:

11111.5. (a) After the filing of an accusation under this chapter, the director may enter into a stipulated compromise settlement agreement with the consent of the licensee on terms and conditions mutually agreeable to the director, the respondent licensee, and the accuser without further hearing or appeal. The agreement may include, but is not limited to, a period of probation or monetary

penalties, or both. The monetary penalty shall not exceed one thousand dollars ($1,000) for driving school owners or five hundred dollars ($500) for driving school operators or driving instructors for each violation, and it shall be based on the nature of the violation and the effect of the violation on the purposes of this chapter.

(b) A compromise settlement agreement may be entered before, during, or after the hearing, but is valid only if executed and filed pursuant to subdivision (d) before the proposed decision of the hearing officer, if any, is adopted or the case is decided.

(c) The department shall adopt, by regulation, a schedule of maximum and minimum amounts of monetary penalties, the payment of which may be included as a term or condition of a compromise settlement agreement entered under subdivision (a). Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties in that schedule.

(d) Any compromise settlement agreement entered under this section shall be signed by the director, the respondent licensee, and the accuser, or by their authorized representatives. The director shall file, or cause to be filed, the agreement with the Office of Administrative Hearings, together with the department's notice of withdrawal of the accusation or statement of issues upon which the action was initiated.

(e) If the respondent licensee fails to perform all of the terms and conditions of the compromise settlement agreement, the agreement is void and the department may take any action authorized by law notwithstanding the agreement, including, but not limited to, refiling the accusation or imposing license sanctions.

(f) This section shall remain in effect only until July 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1988, deletes or extends that date.

SEC. 34. Section 11111.5 is added to the Vehicle Code, to read:

11111.5. (a) After the filing of an accusation under this chapter, the director may enter into a stipulated compromise settlement agreement with the consent of the licensee on terms and conditions mutually agreeable to the director, the respondent licensee, and the accuser without further hearing or appeal. The agreement may include, but is not limited to, a period of probation or monetary penalties, or both. The monetary penalty shall not exceed one thousand dollars ($1,000) for driving school owners or for a principal in an all-terrain vehicle safety training organization or five hundred dollars ($500) for driving school operators or for driving instructors or all-terrain vehicle safety instructors for each violation, and the monetary penalty shall be based on the nature of the violation and the effect of the violation on the purposes of this chapter.

(b) A compromise settlement agreement may be entered before, during, or after the hearing, but is valid only if executed and filed pursuant to subdivision (d) before the proposed decision of the hearing officer, if any, is adopted or the case is decided.

(c) The department shall adopt, by regulation, a schedule of maximum and minimum amounts of monetary penalties, the payment of which may be included as a term or condition of a compromise settlement agreement entered under subdivision (a). Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties in that schedule.

(d) Any compromise settlement agreement entered under this section shall be signed by the director, the respondent licensee, and the accuser, or by their authorized representatives. The director shall file, or cause to be filed, the agreement with the Office of Administrative Hearings, together with the department's notice of withdrawal of the accusation or statement of issues upon which the action was initiated.

(e) If the respondent licensee fails to perform all of the terms and conditions of the compromise settlement agreement, the agreement is void and the department may take any action authorized by law notwithstanding the agreement, including, but not limited to, refiling the accusation or imposing license sanctions.

(f) This section shall become operative on July 1, 1988.

SEC. 35. Section 11116 of the Vehicle Code is amended to read:

11116. (a) Whenever the department cancels, suspends, or revokes the license of a driving school owner, driving school operator, or driving instructor, the licensee or person in possession thereof shall immediately return the license, certificates of completion, and any other evidence of licensing to the department.

(b) This section shall remain in effect only until July 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1988, deletes or extends that date.

SEC. 36. Section 11116 is added to the Vehicle Code, to read:

11116. (a) Whenever the department cancels, suspends, or revokes a license issued under this chapter, the licensee or person in possession thereof shall immediately return the license, certificates of completion, and any other evidence of licensing to the department.

(b) This section shall become operative on July 1, 1988.

SEC. 37. Chapter 6 (commencing with Section 38500) is added to Division 16.5 of the Vehicle Code, to read:

CHAPTER 6. ALL-TERRAIN VEHICLES

38500. The Off-Highway Vehicle Safety Education Committee is hereby established. The committee consists of the Commissioner of the California Highway Patrol, the Deputy Director of Parks and Recreation for Off-Highway Vehicles, the Director of Motor Vehicles, or their designees, and a member of the Off-Highway Motor Vehicle Recreation Commission appointed by the members of the commission. The committee shall receive staff assistance in its operations from the Off-Highway Motor Vehicle Recreation Division

in the Department of Parks and Recreation.

38500.1. The Off-Highway Vehicle Safety Education Committee shall meet periodically to perform all of the following:

(a) Develop minimum criteria for certification as an approved all-terrain vehicle safety training organization. The criteria shall include, but not be limited to, the following:

(1) Curriculum and materials for training instructors to teach all-terrain vehicle operation and safety.

(2) Curriculum and materials for training all-terrain vehicle safety.

(3) Curriculum for teaching responsible use of off-highway vehicles with respect to environmental considerations, private property restrictions, off-highway vehicle operating laws, including noise and spark arrestor laws, and prohibitions against operating off-highway vehicles under the influence of alcohol or drugs.

(4) Record keeping and insurance requirements to satisfy the requirements of Sections 11103.1 and 11108.

(b) Upon presentation to the committee of a proposed program by an applicant to become an approved all-terrain vehicle safety training organization, the committee shall determine whether the applicant's program meets the minimum criteria and, if approved, shall recommend the organization for licensing pursuant to Section 11105.6.

38501. (a) An all-terrain vehicle safety training organization, commencing on January 1, 1989, shall issue an all-terrain vehicle safety certificate furnished by the department to any individual who successfully completes a course of instruction in all-terrain vehicle operation and safety as approved and certified by the Off-highway Vehicle Safety Education Committee.

(b) The department shall charge a fee not to exceed three dollars ($3) for each all-terrain vehicle safety certificate issued by an all-terrain vehicle safety training organization to each person completing a course of instruction from an all-terrain vehicle safety instructor using the approved course of instruction of the all-terrain vehicle safety training organization. The amount of the fee shall be determined by the department and shall be sufficient to defray the actual costs incurred by the department for administering and monitoring this program.

(c) An all-terrain vehicle safety training organization shall not charge a fee in excess of the fee charged by the department pursuant to subdivision (b) for furnishing an all-terrain vehicle safety certificate. An organization may charge a fee not to exceed three dollars ($3) in addition to the fee charged by the department for the issuance of a duplicate certificate and shall provide a duplicate certificate if requested by the person who completed the course.

38502. The department, on and after July 1, 1988, may monitor any all-terrain vehicle safety training organization or any all-terrain vehicle safety instructor without advance notice. The monitoring may include, but is not limited to, the instruction provided, business

practices, and records required by Section 11108.

38503. No person under the age of 18 years, on and after January 1, 1990, shall operate an all-terrain vehicle on public lands of this state unless the person satisfies one of the following conditions:

(a) The person is taking a prescribed safety training course under the direct supervision of a certified all-terrain vehicle safety instructor.

(b) The person is under the direct supervision of an adult who has in their possession an appropriate safety certificate issued by this state, or issued under the authority of another state.

(c) The person has in possession an appropriate safety certificate issued by this state or issued under the authority of another state.

38504. No person under 14 years of age, on and after January 1, 1990, shall operate an all-terrain vehicle on public lands of this state unless the person satisfies one of the conditions set forth in Section 38503 and, in addition, is accompanied by and under the direct supervision of a parent or guardian or is accompanied by and under the direct supervision of an adult who is authorized by the parent or guardian.

38505. No person under the age of 15 years and six months, on and after January 1, 1990, shall operate, ride, or be otherwise propelled on an all-terrain vehicle on public lands unless the person wears a safety helmet meeting standards adopted by the United States Department of Transportation.

38506. No operator of an all-terrain vehicle, on and after January 1, 1990, shall carry a passenger when operating on public lands.

SEC. 38. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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. 39. The sum of forty-seven thousand eight hundred thirty-seven dollars ($47,837) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Department of Motor Vehicles for purposes of this act.

CHAPTER 882

An act to add Section 8850.6 to the Government Code, relating to state government.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 8850.6 is added to the Government Code, to read:

8850.6. The advocate may establish a centralized interactive telephone referral system to assist small and minority businesses in their operations, including governmental requirements, such as taxation, accounting, and pollution control, and to provide information concerning the agency from which more specialized assistance may be obtained. The advocate may establish and advertise a telephone number to serve this centralized interactive telephone referral system.

CHAPTER 883

An act to amend Section 798.56 of the Civil Code, relating to mobilehomes.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. 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 or resident 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 or resident, upon the park premises, which constitutes a substantial annoyance to other homeowners or residents.

(c) Failure of the homeowner or resident 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 or resident 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 or resident 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 or resident 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) (1) Nonpayment of rent, utility charges, or reasonable incidental service charges; provided that the amount due has been unpaid for a period of at least five days from its due date, and provided, that the homeowner shall be given a three-day written notice subsequent to that five-day period 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 shall cure a default under this subdivision.

(2) However, if a homeowner has been given a three-day notice to pay the amount due or to vacate the tenancy on three or more occasions within the preceding 12-month period, no written three-day notice shall be required for a subsequent nonpayment of rent, utility charges, or reasonable incidental service charges.

(3) Payment by the legal owner, as defined in Section 18005.8 of the Health and Safety Code, any junior lienholder, as defined in Section 18005.3 of the Health and Safety Code, or the registered owner, as defined in Section 18009.5 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, each junior lienholder, and the registered owner provided in subdivision (b) of Section 798.55, shall cure a default under this subdivision with respect to such payment.

(4) The homeowner shall remain liable for all payments due up until the time the tenancy is vacated.

(5) Cure of a default of rent, utility charges, or reasonable incidental service charges by the legal owner, any junior lienholder, or the 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 or her 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. 2. 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 or resident 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 or resident, upon the park premises, which constitutes a substantial annoyance to other homeowners or residents.

(c) Failure of the homeowner or resident 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 or resident 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 or resident 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 or resident 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) (1) Nonpayment of rent, utility charges, or reasonable incidental service charges; provided that the amount due has been unpaid for a period of at least five days from its due date, and

provided, that the homeowner shall be given a three-day written notice subsequent to that five-day period 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. The 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 shall cure a default under this subdivision.

(2) However, if a homeowner has been given a three-day notice to pay the amount due or to vacate the tenancy on three or more occasions within the preceding 12-month period, no written three-day notice shall be required for a subsequent nonpayment of rent, utility charges, or reasonable incidental service charges.

(3) Payment by the legal owner, as defined in Section 18005.8 of the Health and Safety Code, any junior lienholder, as defined in Section 18005.3 of the Health and Safety Code, or the registered owner, as defined in Section 18009.5 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, each junior lienholder, and the registered owner provided in subdivision (b) of Section 798.55, shall cure a default under this subdivision with respect to that payment.

(4) The homeowner shall remain liable for all payments due up until the time the tenancy is vacated.

(5) Cure of a default of rent, utility charges, or reasonable incidental service charges by the legal owner, any junior lienholder, or the registered owner, if other than the homeowner, as provided by this subdivision, may not be exercised more than twice during a 12-month period.

(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 or her 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, 1988, 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. 3. Section 2 of this bill incorporates amendments to Section 798.56 of the Civil Code proposed by both this bill and AB 744. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 798.56 of the Civil Code, and (3) this bill is enacted after AB 744, in which case Section 1 of this bill shall not become operative.

CHAPTER 884

An act to amend Sections 5600.9 and 5713 of, and to add Sections 5650.1, 5652.7, 5657, and 5750.1 to, the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 5600.9 of the Welfare and Institutions Code is amended to read:

5600.9. Each county shall utilize available private and private nonprofit mental health resources and facilities in the county prior to developing new county-operated resources or facilities when these private and private nonprofit mental health resources or facilities are of at least equal quality and cost as compared with county-operated resources or facilities. All the available local public or private and private nonprofit facilities shall be utilized before state hospitals are used. The annual county mental health plan shall include an affidavit stipulating to the county's compliance with this section.

SEC. 2. Section 5650.1 is added to the Welfare and Institutions Code, to read:

5650.1. Notwithstanding any other provision of law, a county may contract under this part with a mental health care provider for a program of mental health services of up to three years in duration. Any requirements in a three-year program established in a contract between a county and a mental health provider are subject to the availability of mental health program funding.

SEC. 3. Section 5652.7 is added to the Welfare and Institutions Code, to read:

5652.7. A county shall have only 60 days from the date of submission of an application to review and certify or deny an application to establish a new mental health care provider. If an application requires review by the State Department of Health Services, the department shall also have only 60 days from the date of submission of the application to review and certify or deny an application to establish a new mental health care provider.

SEC. 4. Section 5657 is added to the Welfare and Institutions Code, to read:

5657. (a) The private organization or private nonprofit organization awarded a contract with the county agency to supply mental health services under this part shall provide an invoice to the county for the amount of the payment due within 60 days of the date the services are supplied.

(b) Any county which, without reasonable cause, fails to make any payment within 60 days of the required payment date to a private organization or private nonprofit organization awarded a contract with the county agency to supply mental health services under this part, for an indisputed claim which was properly executed by the claimant and submitted to the county, shall pay a penalty of 0.10 percent of the amount due, per day, from the 61st day after the required payment date.

(c) For the purposes of this section, "required payment date" means any of the following:

(1) The date on which payment is due under the terms of the contract.

(2) If a specific date is not established by contract, the date upon which an invoice is received, if the invoice specifies payment is due upon receipt.

(3) If a specific date is not established by contract or invoice, 60 days after receipt of a proper invoice for the amount of the payment due.

(d) The penalty assessed under this section shall not be paid from the Short-Doyle program funds or county matching funds. The penalty provisions of this section shall not apply to the late payment of any federal funds or Medi-Cal funds.

SEC. 5. Section 5713 of the Welfare and Institutions Code is amended to read:

5713. Except as otherwise provided in this section, in determining the amounts which may be paid, fees paid by persons receiving services or fees paid on behalf of persons receiving services by the federal government, by the California Medical Assistance Program set forth in Chapter 7 (commencing with Section 14000) of Part 3 of Division 9, and by other public or private sources, shall be deducted from the costs of providing services. However, a county may negotiate a contract which permits a mental health care provider to retain unanticipated funds above the budgeted contract amount specified in the county mental health plan, provided that the unanticipated revenues are utilized for the mental health services

specified in the contract. If a provider is permitted by contract to retain unanticipated revenues above the budgeted amount, the mental health provider shall specify the services funded by those revenues in the yearend cost report submitted to the county. A county shall not permit the retention of any fees paid by private resources on behalf of Medi-Cal beneficiaries without having those fees deducted from the costs of providing services. Whenever feasible, mentally disordered persons who are eligible for mental health services under the California Medical Assistance Program shall be treated in a facility approved for reimbursement in that program.

General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be considered as "fees paid by persons" or "fees paid on behalf of persons receiving services" under this section and the contributions shall not be applied in determining the amounts to be paid. These unrestricted contributions shall not be used in part or in whole to defray the costs or the allocated costs of the California Medical Assistance Program.

SEC. 6. Section 5750.1 is added to the Welfare and Institutions Code, to read:

5750.1. Notwithstanding Section 5750, any standard, rule, or policy, not directly the result of a statutory or administrative law change, adopted by the department or county during the term of an existing county Short-Doyle plan contract shall not apply to the negotiated rate and net amount terms of that contract under Section 5705.2, but shall only apply to contracts established after adoption of the standard, rule, or policy.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 885

An act to amend and renumber Section 4030.9 of, and to add Sections 4030.6 and 4030.7 to, the Health and Safety Code, relating to water, and making an appropriation therefor.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 4030.9 of the Health and Safety Code is amended and renumbered to read:

4030.5. (a) The Emergency Clean Water Grant Fund is hereby established in the General Fund and, notwithstanding Section 13340 of the Government Code, is continuously appropriated to the department, without regard to fiscal years, to provide financial assistance to public water systems and to fund emergency actions by the department to ensure that safe drinking water supplies are available to all Californians who are served by public water systems.

(b) The department may expend funds in the Emergency Clean Water Grant Fund for the purposes specified in subdivision (a), including, but not limited to, payment for all of the following actions:

(1) The provision of alternative water supplies and bottled water.

(2) Improvements of the existing water supply system.

(3) Hookups with adjacent water systems.

(4) Design, purchase, installation, and operation and maintenance of water treatment technologies.

(c) The department shall develop and revise guidelines for the allocation and administration of moneys in the Emergency Clean Water Grant Fund. These guidelines shall include, but are not limited to, all of the following:

(1) A definition of what constitutes an emergency requiring an alternative or improved water supply.

(2) Priorities and procedures for allocating funds.

(3) Repayment provisions, as appropriate.

(4) Procedures for recovering funds from parties responsible for the contamination of public water supplies.

The guidelines are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 4030.6 is added to the Health and Safety Code, to read:

4030.6. (a) The department shall expend moneys available in the Emergency Clean Water Grant Fund only for the purpose of taking corrective action necessary to remedy or prevent an emergency or imminent threat to public health due to the contamination or potential contamination of the public water supply.

(b) Notwithstanding any other provision of law, the department

may enter into written contracts for remedial action taken or to be taken pursuant to subdivision (a), and may enter into oral contracts, not to exceed five thousand dollars ($5,000) in obligation, when, in the judgment of the department, immediate remedial action is necessary to remedy or prevent an emergency specified in subdivision (a). The contracts, written or oral, may include provisions for the rental or purchase of tools and equipment, either with or without operators, for the furnishing of labor and materials and for engineering consulting necessary to accomplish the work.

SEC. 3. Section 4030.7 is added to the Health and Safety Code, to read:

4030.7. Any remedial action taken or contracted for by the department pursuant to Section 4030.6 shall be exempt from the following provisions:

(a) State Contract Act provided for pursuant to Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code.

(b) Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(c) Section 14780 of the Government Code and Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

(d) Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

CHAPTER 886

An act to add Sections 14529.11 and 14529.12 to the Government Code, relating to highways.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. (a) The Legislature finds that the Counties of Alameda, Contra Costa, Fresno, Los Angeles, San Francisco, San Mateo, Santa Clara, and Santa Cruz, have exercised the authority to seek increases in transactions and use taxes, and obtained the approval from the voters for a one-half to 1 percent increase in transactions and use taxes to pay for local transportation improvements. Several other counties are considering similar actions.

(b) The Legislature further finds that several cities and counties have imposed local fees and established special transportation agencies to raise additional revenue to pay for local transportation improvements.

(c) In order to ensure the integrity of the state highway system,

the Department of Transportation should maintain oversight to ensure compliance with state and federal requirements on locally financed state highway projects, including planning, design, right-of-way acquisition, and construction. In addition, the department should be responsible for the costs of this oversight.

(d) It is the intent of the Legislature that, in order to ensure that the expectations of cities, counties, and local transportation agencies that have raised local revenues to pay for transportation improvements are fulfilled, and that the planning, design, right-of-way acquisition, and construction of these projects are delivered in the most expeditious fashion, the department shall give priority to highway projects financed from local revenues without impeding the delivery of projects contained in the state transportation improvement program.

SEC. 2. Section 14529.11 is added to the Government Code, to read:

14529.11. The following conditions shall apply to projects in the state highway system which are financed from retail transactions and use taxes:

(a) A local jurisdiction which chooses to provide its own financing for the construction or improvement of a state highway shall be responsible for determining the priority and delivery schedule of locally funded projects. The jurisdiction shall consult with the department in determining the schedules.

(b) The local jurisdiction shall request that the department, as the state agency responsible for determining the final concept and location of projects in the state highway system, prepare, or cause to be prepared, an initial project report in conjunction with the local jurisdiction. The request shall include preliminary information on the description, priority, and delivery schedule of all projects proposed by the local jurisdiction to be financed by retail transactions and use taxes.

(c) The department shall use the initial project report prepared pursuant to subdivison (b) to determine and obtain initial agreements with the local jurisdiction on feasibility, concept, estimates, staging, limits, environmental considerations, and schedules. The department shall prepare the initial project report at state expense and within a timeframe established jointly by the local jurisdiction and the department. The local jurisdiction shall provide, at its expense, appropriate existing technical and financial information that may be needed to prepare the initial project report and may, at its option, provide other data to expedite preparation and approval. After the department and the local jurisdiction have provided their initial approval, any change in project scope that causes any change in cost estimates or schedule shall be agreed upon by the local jurisdiction, the department and, where appropriate, the Federal Highway Administration.

(d) Upon completion of the initial project report, or at a time deemed appropriate by the local jurisdiction, the department shall

respond within 30 days to a request from the local jurisdiction to prepare, or cause to be prepared, all project development work through environmental clearance for those projects financed by retail transactions and use taxes. The local jurisdiction's request shall include the local jurisdiction's final determination of the priority and delivery schedule of proposed projects. This determination may, but is not required to, match the initial agreements reached in the initial project report. If the department determines that it is able to comply with the request, the state shall pay for the project development work through environmental clearance. If the department determines it is unable to comply with the request, the local jurisdiction may proceed with project development pursuant to Section 14529.12.

(e) The local jurisdiction is responsible for procuring and paying all costs of project development work beyond environmental clearance, including, but not limited to, design, right-of-way acquisition, and construction.

(f) The detailed application of the conditions prescribed by this section shall be set forth in an agreement between the department and the local jurisdiction.

This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 3. Section 14529.12 is added to the Government Code, to read:

14529.12. A local jurisdiction which has determined to utilize its own funds for the construction or improvement of a state highway may, if the department is unable to comply with the request specified in subdivision (d) of Section 14529.11, further request the department to furnish the local jurisdiction with all information and assistance necessary to enable the local jurisdiction to proceed with the planning, design, and construction of the project. A local jurisdiction which chooses to proceed with project development work through environmental clearance pursuant to this section, is responsible for the costs associated with the work. The department, however, shall provide the required oversight at state expense.

Upon receiving sufficient assurances that adequate local funding for the project will be made available by the local jurisdiction, the department shall move expeditiously to furnish that information and assistance to the local jurisdiction within 90 days of the department's determination that it cannot comply with the request specified in subdivision (d) of Section 14529.11.

This information shall only be made available after the department has had the opportunity to determine whether it will be able to comply with the request specified in subdivision (d) of Section 14529.11.

The project shall be designed and the environmental documents prepared in accordance with the department's practices for planning, design, and construction. The department shall prescribe

these practices through policies and procedures memoranda within the 90-day period. The department shall provide appropriate oversight. These practices shall not apply to the organizational structure of the local jurisdiction or any of its consultants.

The department shall accept the completed project into the state highway system if it was approved and constructed in accordance with the practices prescribed by the department pursuant to this section.

Review and approval of project work being done by a local jurisdiction shall be expedited by the department. The department shall organize appropriate professional staff for oversight to ensure that all work done on the state highway system on projects funded by retail transactions and use taxes conforms with established department practices. The required level of departmental oversight for this review and approval is the financial responsibility of the department.

This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 5. Notwithstanding the fact that Section 14529.11 of the Government Code is repealed on January 1, 1992, any project development work initiated by the Department of Transportation pursuant to Section 14529.11 of the Government Code prior to January 1, 1992, shall be fully completed by the department.

SEC. 6. (a) On or before January 1, 1991, the Legislative Analyst shall prepare and submit to the Legislature a report on the project development work undertaken pursuant to Section 14529.11 of the Government Code. The report shall include an evaluation of the working relationship between the Department of Transportation and local jurisdictions which are responsible for determining the priority and schedule of locally financed projects pursuant to that section.

CHAPTER 887

An act to add Section 84035 to the Education Code, and to amend Sections 53600, 53601, 53630, and 53635 of the Government Code, relating to surplus funds.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 84035 is added to the Education Code, to read:

84035. The governing board of any community college district may invest any surplus moneys of the district as authorized pursuant

to Article 1 (commencing with Section 53600) and Article 2 (commencing with Section 53630) of Chapter 4 of Title 5 of Division 2 of the Government Code.

SEC. 2. Section 53600 of the Government Code is amended to read:

53600. As used in this article, "local agency" means county, city, city and county, including a chartered city or county, school district, community college district, public district, county board of education, county superintendent of schools, or any public or municipal corporation.

SEC. 3. Section 53601 of the Government Code, as amended by Section 2.5 of Chapter 853 of the Statutes of 1986, is amended to read:

53601. The legislative body of a local agency having money in a sinking fund of, or surplus money in, its treasury not required for the immediate necessities of the local agency may invest any portion of the money which it deems wise or expedient in:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, the Tennessee Valley Authority, or in obligations, participations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or in guaranteed portions of Small Business Administration notes; or in obligations, participations, or other instruments of, or issued by, a federal agency or a United States government-sponsored enterprise.

(f) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which are eligible for purchase by the Federal Reserve System. Purchases of bankers acceptances may not exceed 270 days maturity or 40 percent of the agency's surplus money which may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any surplus money in its treasury in any manner authorized by the Municipal Utility District Act, Division 6 (commencing with Section 11501) of the Public Utilities Code.

(g) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and having total assets in excess of five hundred million dollars ($500,000,000) and having an "A" or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 180 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 15 percent of the agency's surplus money which may be invested pursuant to this section. An additional 15 percent, or a total of 30 percent of the agency's surplus money, may be invested pursuant to this subdivision. The additional 15 percent may be so invested only if the dollar-weighted average maturity of the entire amount does not exceed 31 days. "Dollar-weighted average maturity" means the sum of the amount of each outstanding commercial paper investment multiplied by the number of days to maturity, divided by the total amount of outstanding commercial paper.

(h) Negotiable certificates of deposits issued by a nationally or state-chartered bank or a state or federal association (as defined by Section 5102 of the Financial Code) or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposits do not come within Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5, except that the amount so invested shall be subject to the limitations of Section 53638.

(i) Investments in repurchase agreements or reverse repurchase agreements of any securities authorized by this section, so long as the proceeds of the reverse repurchase agreement are invested solely to supplement the income normally received from these securities. Investment in a reverse repurchase agreement shall be made only upon prior approval of the legislative body of the local agency. For purposes of this section, the term "repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the seller will repurchase the securities on or before a specified date and for a specified amount and will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book entry account may be used for book entry delivery. The term

"counterparty" for the purposes of this subdivision, means the other party to the transaction. A counterparty bank's trust department or safekeeping department may be used for physical delivery of the underlying security. The term of repurchase agreements shall be for one year or less. The term "securities," for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

The term "reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase such securities on or before a specified date and for a specified amount.

(j) Medium-term corporate notes of a maximum of five years' maturity issued by corporations operating within the United States. Securities eligible for investment under this subdivision shall be rated in the top three note rating categories by two of the three largest nationally recognized rating services. Purchase of medium-term corporate notes may not exceed 15 percent of the agency's surplus money which may be invested pursuant to this section.

(k) Shares of beneficial interest issued by diversified management companies, as defined in Section 23701m of the Revenue and Taxation Code, investing in the securities and obligations as authorized by subdivisions (a) to (*l*), inclusive, of this section and which comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). To be eligible for investment pursuant to this subdivision, these companies shall either: (1) attain the highest ranking or the highest letter and numerical rating provided by not less than two of the three largest nationally recognized rating services, or (2) have an investment adviser registered with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations as authorized by subdivisions (a) to (m), inclusive, of this section and with assets under management in excess of five hundred million dollars ($500,000,000). The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that these companies may charge and shall not exceed 15 percent of the agency's surplus money which may be invested pursuant to this section.

(*l*) Notwithstanding anything to the contrary contained in this section, Section 53635 or any other provision of law, moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture,

or agreement of the local agency providing for the issuance.

SEC. 3.5. Section 53601 of the Government Code, as amended by Section 2.5 of Chapter 853 of the Statutes of 1986, is amended to read:

53601. The legislative body of a local agency having money in a sinking fund of, or surplus money in, its treasury not required for the immediate necessities of the local agency may invest any portion of the money which it deems wise or expedient in:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, the Tennessee Valley Authority, or in obligations, participations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or in guaranteed portions of Small Business Administration notes; or in obligations, participations, or other instruments of, or issued by, a federal agency or a United States government-sponsored enterprise.

(f) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which are eligible for purchase by the Federal Reserve System. Purchases of bankers acceptances may not exceed 270 days maturity or 40 percent of the agency's surplus money which may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any surplus money in its treasury in any manner authorized by the Municipal Utility District Act, Division 6 (commencing with Section 11501) of the Public Utilities Code.

(g) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and having total

assets in excess of five hundred million dollars ($500,000,000) and having an "A" or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 180 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 15 percent of the agency's surplus money which may be invested pursuant to this section. An additional 15 percent, or a total of 30 percent of the agency's surplus money, may be invested pursuant to this subdivision. The additional 15 percent may be so invested only if the dollar-weighted average maturity of the entire amount does not exceed 31 days. "Dollar-weighted average maturity" means the sum of the amount of each outstanding commercial paper investment multiplied by the number of days to maturity, divided by the total amount of outstanding commercial paper.

(h) Negotiable certificates of deposits issued by a nationally or state-chartered bank or a state or federal association (as defined by Section 5102 of the Financial Code) or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposits do not come within Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5, except that the amount so invested shall be subject to the limitations of Section 53638.

(i) Investments in repurchase agreements or reverse repurchase agreements of any securities authorized by this section, so long as the proceeds of the reverse repurchase agreement are invested solely to supplement the income normally received from these securities. Investment in a reverse repurchase agreement shall be made only upon prior approval of the legislative body of the local agency. For purposes of this section, the term "repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the seller will repurchase the securities on or before a specified date and for a specified amount and will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery. The term "counterparty" for the purposes of this subdivision, means the other party to the transaction. A counterparty bank's trust department or safekeeping department may be used for physical delivery of the underlying security. The term of repurchase agreements shall be for one year or less. The term "securities," for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

The term "reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the

local agency will repurchase such securities on or before a specified date and for a specified amount.

(j) Medium-term notes of a maximum of five years maturity issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated in a rating category of "A" or its equivalent or better by a nationally recognized rating service. Purchases of medium-term notes may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section.

(k) Shares of beneficial interest issued by diversified management companies, as defined in Section 23701m of the Revenue and Taxation Code, investing in the securities and obligations as authorized by subdivisions (a) to (*l*), inclusive, of this section and which comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). To be eligible for investment pursuant to this subdivision, these companies shall either: (1) attain the highest ranking or the highest letter and numerical rating provided by not less than two of the three largest nationally recognized rating services, or (2) have an investment adviser registered with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations as authorized by subdivisions (a) to (m), inclusive, of this section and with assets under management in excess of five hundred million dollars ($500,000,000). The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that these companies may charge and shall not exceed 15 percent of the agency's surplus money which may be invested pursuant to this section.

(*l*) Notwithstanding anything to the contrary contained in this section, Section 53635 or any other provision of law, moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.

(m) Notes, bonds, or other obligations which are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the

trust department of a bank which is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

SEC. 4. Section 53630 of the Government Code is amended to read:

53630. As used in this article:

(a) "Local agency" means county, city, city and county, including a chartered city or county, a community college district, or other public agency or corporation in this state.

(b) "Treasurer" means treasurer of the local agency.

(c) "Depository" means a state or national bank, savings association or federal association, or a state or federal credit union located in this state in which the moneys of a local agency are deposited.

(d) "Agent of depository" means a trust company or trust department of a state or national bank located in this state, including the trust department of a depository where authorized, and the Federal Home Loan Bank of San Francisco, which is authorized to act as an agent of depository for the purposes of this article pursuant to Section 53657.

(e) "Security" means any of the eligible securities or obligations listed in Section 53651.

(f) "Pooled securities" means eligible securities held by an agent of depository for a depository and securing deposits of one or more local agencies.

(g) "Administrator" means the Administrator of Local Agency Security of the State of California.

(h) "Savings association or federal association" means a savings association, savings and loan association, or savings bank as defined by Section 5102 of the Financial Code.

(i) For purposes of being a depository of moneys belonging to or being in the custody of a local agency, the phrases "state or national bank located in this state," "state or national bank," "state or national bank in this state," and "state or national banks in the state" include a foreign bank licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 of Division 1 of the Financial Code to maintain a branch office in this state or authorized under federal law to maintain a federal branch in this state.

SEC. 5. Section 53635 of the Government Code, as amended by Section 4.5 of Chapter 853 of the Statutes of 1986, is amended to read:

53635. As far as possible, all money belonging to, or in the custody of, a local agency, including money paid to the treasurer or other official to pay the principal, interest, or penalties of bonds, shall be deposited for safekeeping in state or national banks, savings associations or federal associations or credit unions in this state selected by the treasurer or other official having the legal custody of the money; or, unless otherwise directed by the legislative body

pursuant to Section 53601, may be invested in the following:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the federal home loan bank, the Tennessee Valley Authority, or in obligations, participations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or in guaranteed portions of Small Business Administration notes; or in obligations, participations, or other instruments of, or issued by, federal agency or a United States government-sponsored enterprise.

(f) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which are eligible for purchase by the Federal Reserve System. Purchases of bankers acceptances may not exceed 270 days maturity or 40 percent of the agency's surplus funds which may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any surplus money in its treasury in any manner authorized by the Municipal Utility District Act, Division 6 (commencing with Section 11501) of the Public Utilities Code.

(g) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and having total assets in excess of five hundred million dollars ($500,000,000) and having an "A" or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 180 days maturity nor represent more than 10 percent of the outstanding paper of an

issuing corporation. Purchases of commercial paper may not exceed 15 percent of the agency's surplus money which may be invested pursuant to this section. An additional 15 percent, or a total of 30 percent of the agency's money or money in its custody, may be invested pursuant to this subdivision. The additional 15 percent may be so invested only if the dollar-weighted average maturity of the entire amount does not exceed 31 days. "Dollar-weighted average maturity" means the sum of the amount of each outstanding commercial paper investment multiplied by the number of days to maturity, divided by the total amount of outstanding commercial paper.

(h) Negotiable certificates of deposit issued by a nationally or state-chartered bank or a savings association or federal association or a state or federal credit union or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5, except that the amount so invested shall be subject to the limitations of Section 53638. For purposes of this section, the legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money are prohibited from depositing or investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or an employee of the administrative officer, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee of the state or federal credit union issuing the negotiable certficates of deposit.

(i) Investments in repurchase agreements or reverse repurchase agreements of any securities authorized by this section, so long as the proceeds of the reverse repurchase agreement are invested solely to supplement the income normally received from these securities. Investment in a reverse repurchase agreement shall be made only upon prior approval of the legislative body of the local agency. For purposes of this section, the term "repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the seller will repurchase the securities on or before a specified date and for a specified amount and will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book entry account may be used for book entry delivery. The term "counterparty" for the purposes of this subdivision, means the other party to the transaction. A counterparty bank's trust department or safekeeping department may be used for physical delivery of the

underlying security. The term of repurchase agreements shall be for one year or less. The term "securities," for purpose of repurchase under this subdivision, shall mean securities of the same issuer, description, issue date, and maturity.

The term "reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase such securities on or before a specified date and for a specified amount.

(j) Medium-term corporate notes of a maximum of five years' maturity issued by corporations operating within the United States. Securities eligible for investment under this subdivision shall be rated in the top three note rating categories by two of the three largest nationally recognized rating services. Purchase of medium-term corporate notes may not exceed 15 percent of the agency's surplus money which may be invested pursuant to this section.

(k) Shares of beneficial interest issued by diversified management companies, as defined in Section 23701m of the Revenue and Taxation Code, investing in the securities and obligations as authorized by subdivisions (a) to (k), inclusive, of this section and which comply with the investment restrictions of this article and Article 1 (commencing with Section 53600). To be eligible for investment pursuant to this subdivision, these companies shall either: (1) attain the highest ranking or the highest letter and numerical rating provided by not less than two of the three largest nationally recognized rating services, or (2) have an investment adviser registered with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations as authorized by subdivisions (a) to (m), inclusive, of this section and with assets under management in excess of five hundred million dollars ($500,000,000). The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that these companies may charge and shall not exceed 15 percent of the agency's surplus money which may be invested pursuant to this section.

SEC. 5.5. Section 53635 of the Government Code, as amended by Section 4.5 of Chapter 853 of the Statutes of 1986, is amended to read:

53635. As far as possible, all money belonging to, or in the custody of, a local agency, including money paid to the treasurer or other official to pay the principal, interest, or penalties of bonds, shall be deposited for safekeeping in state or national banks, savings associations or federal associations or credit unions in this state selected by the treasurer or other official having the legal custody of the money; or, unless otherwise directed by the legislative body pursuant to Section 53601, may be invested in the following:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank, the Tennessee Valley Authority, or in obligations, participations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or in guaranteed portions of Small Business Administration notes; or in obligations, participations, or other instruments of, or issued by, federal agency or a United States government-sponsored enterprise.

(f) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which are eligible for purchase by the Federal Reserve System. Purchases of bankers acceptances may not exceed 270 days maturity or 40 percent of the agency's surplus funds which may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any surplus money in its treasury in any manner authorized by the Municipal Utility District Act, Division 6 (commencing with Section 11501) of the Public Utilities Code.

(g) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and having total assets in excess of five hundred million dollars ($500,000,000) and having an "A" or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 180 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 15 percent of the agency's surplus money which may be invested pursuant to this section. An additional 15 percent, or a total of 30 percent of the agency's money or money in its custody, may be invested pursuant to this subdivision. The additional 15 percent may

be so invested only if the dollar-weighted average maturity of the entire amount does not exceed 31 days. "Dollar-weighted average maturity" means the sum of the amount of each outstanding commercial paper investment multiplied by the number of days to maturity, divided by the total amount of outstanding commercial paper.

(h) Negotiable certificates of deposit issued by a nationally or state-chartered bank or a savings association or federal association or a state or federal credit union or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5, except that the amount so invested shall be subject to the limitations of Section 53638. For purposes of this section, the legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money are prohibited from depositing or investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or an employee of the administrative officer, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee of the state or federal credit union issuing the negotiable certficates of deposit.

(i) Investments in repurchase agreements or reverse repurchase agreements of any securities authorized by this section, so long as the proceeds of the reverse repurchase agreement are invested solely to supplement the income normally received from these securities. Investment in a reverse repurchase agreement shall be made only upon prior approval of the legislative body of the local agency. For purposes of this section, the term "repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the seller will repurchase the securities on or before a specified date and for a specified amount and will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book entry account may be used for book entry delivery. The term "counterparty" for the purposes of this subdivision, means the other party to the transaction. A counterparty bank's trust department or safekeeping department may be used for physical delivery of the underlying security. The term of repurchase agreements shall be for one year or less. The term "securities," for purpose of repurchase under this subdivision, shall mean securities of the same issuer, description, issue date, and maturity.

The term "reverse repurchase agreement" means a sale of

securities by the local agency pursuant to an agreement by which the local agency will repurchase such securities on or before a specified date and for a specified amount.

(j) Medium-term notes of a maximum of five years' maturity issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated in a rating category of "A" or its equivalent or better by a nationally recognized rating service. Purchases of medium-term notes may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section.

(k) Shares of beneficial interest issued by diversified management companies, as defined in Section 23701m of the Revenue and Taxation Code, investing in the securities and obligations as authorized by subdivisions (a) to (k), inclusive, of this section and which comply with the investment restrictions of this article and Article 1 (commencing with Section 53600). To be eligible for investment pursuant to this subdivision, these companies shall either: (1) attain the highest ranking or the highest letter and numerical rating provided by not less than two of the three largest nationally recognized rating services, or (2) have an investment adviser registered with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations as authorized by subdivisions (a) to (m), inclusive, of this section and with assets under management in excess of five hundred million dollars ($500,000,000). The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that these companies may charge and shall not exceed 15 percent of the agency's surplus money which may be invested pursuant to this section.

(*l*) Notes, bonds, or other obligations which are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank which is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

SEC. 6. Sections 3.5 and 5.5 of this bill incorporate amendments to Sections 53601 and 53635 respectively of the Government Code proposed by both this bill and SB 962. They shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Sections 53601 and 53635 of the Government Code, and (3) this bill is enacted after SB 962, in which case Sections 3 and 5 of this bill shall not become operative.

CHAPTER 888

An act to amend Section 50805 of, and to add Section 50805 to, 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 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 50803.5 is added to the Health and Safety Code, to read:

50803.5. (a) The department shall not approve any application for a grant under this chapter if a representative of the applicant participates or votes on the review, evaluation, or ranking of the applicant's application as part of any review process authorized pursuant to department regulations. The department shall ensure that if an incorporated or unincorporated organization or governmental agency designated by the department to solicit, review, and recommend ranking for applications from a regional area defined by the department uses a subcommittee for the purpose of reviewing, ranking, and recommending applications for funding, no member of the subcommittee shall be an officer, employee, or agent of, or in any other way have an interest in, any organization applying for such funds. "Interest," as used in this subdivision shall include, but not be limited to, financial, organizational, or contractual relationships affecting the emergency shelter activities of the applicant, and shall not include the provision of uncompensated technical assistance or other forms of uncompensated assistance to the organization.

(b) The initial notice provided by the department of funding for grants shall be transmitted not later than 45 days after the Budget Bill or other statute providing that funding is chaptered.

(c) If the department requires an application for a grant to be submitted to an incorporated or unincorporated organization or governmental agency designated by the department to solicit, review, and recommend ranking for applications from a regional area defined by the department, the department shall allow at least six weeks for completion of that review before acting on the application.

(d) In approving grants the department shall ensure a fair geographical distribution of funds to needy areas and consider in making its decision the prior award of grants under this program.

SEC. 2. Section 50805 of the Health and Safety Code is amended

to read:

50805. (a) Grants awarded pursuant to this chapter may be used, with the approval of the department, to purchase, lease, renovate, repair, or equip buildings and sites for use as emergency shelters, to operate those emergency shelters, and to administer emergency shelter programs.

(b) Any eligible recipient awarded a grant pursuant to this chapter shall be required to use the grant funds to provide emergency shelter to needy persons, to practice nondiscrimination in the provision of the shelter, to use grant funds to supplement, not supplant, other state and local programs providing social services, health care, and housing assistance, and to meet any other qualifications the department finds necessary to carry out the intent of this chapter.

(c) The department shall ensure all of the following:

(1) That an eligible recipient does not utilize grant funds to cover more than 80 percent of the operating expenses of the recipient.

(2) That not more than 5 percent of a grant awarded to an eligible recipient pursuant to this chapter is expended for administrative expenses.

(3) That not more than 50 percent of the moneys in the Emergency Housing and Assistance Fund are expended during any fiscal year for grants to cover operating expenses.

(d) (1) The department shall establish, by regulation, the types of expenses which are included within the meaning of operating and administrative expenses for purposes of this chapter.

(2) At a minimum, those regulations shall include, but not be limited to, the following types of operating and administrative expenses:

(A) Operating expenses relating to supervising and counseling clients in obtaining permanent shelter, job placement, and other sources of support.

(B) Administrative expenses relating to telephone charges, office space rent, salary and benefits for administrative staff personnel, office supplies, photocopying and printing, and mail and accounting services.

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:

This act will facilitate the funding of homeless emergency shelters, and in order to address the critical need for these shelters at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 889

An act to add Section 30507.1 to the Water Code, relating to county water districts.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 30507.1 is added to the Water Code, to read:

30507.1. Each director of the Contra Costa Water District shall receive compensation in an amount not to exceed one hundred dollars ($100) per day for each day's attendance at meetings of the board and for each day's service rendered as a director by request of the board, not exceeding a total of 10 days in any calendar month, together with any expenses incurred in the performance of duties required or authorized by the board.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the Contra Costa Water District, including, but not limited to, the size of the population served by the district and the number of water facilities managed by the district. The Legislature therefore finds that this special act is necessary.

CHAPTER 890

An act to add Section 1203.1k to the Penal Code, relating to probation.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 1203.1k is added to the Penal Code, to read:

1203.1k. For any order of restitution made under Section 1203.1, the court may order the specific amount of restitution and the manner in which restitution shall be made to a victim based on the probation officer's report or it may, with the consent of the defendant, order the probation officer to set the amount of restitution and the manner in which restitution shall be made to a victim. The defendant shall have the right to a hearing before the judge to dispute the determinations made by the probation officer in regard to the amount or manner in which restitution is to be made to the victim. If the court orders restitution to be made to the

Restitution Fund, the court, and not the probation officer, shall determine the amount and the manner in which restitution is to be made to the Restitution Fund.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 891

An act to amend Sections 18035, 18037.5, 18038.7, 18075.5, 18084.7, 18085, 18085.5, 18100.5, 18102.5, 18105.5, 18109, 19981, 19985, 19990, 19991, and 19995 of, to add Sections 19976.05 and 19991.4 to, and to repeal Section 19968 of, the Health and Safety Code, relating to manufactured structures.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 18035 of the Health and Safety Code is amended to read:

18035. (a) For every sale by a dealer of a new or used manufactured home or mobilehome subject to registration under this part, the dealer shall execute in writing and obtain the buyer's signature on a purchase order, conditional sale contract, or other document evidencing the purchase contemporaneous with, or prior to, the receipt of any cash or cash equivalent from the buyer, shall establish an escrow account with an escrow agent, and shall cause to be deposited into that escrow account any cash or cash equivalent received at any time prior to the close of escrow as a deposit, downpayment, or whole or partial payment for the manufactured home or mobilehome or accessory thereto. The downpayment, or whole or partial payment, shall include an amount designated as a deposit, which may be less than, or equal to, the total amount placed in escrow, and shall be subject to the provisions of subdivision (f). The parties shall provide for escrow instructions which identify the fixed amounts of the deposit, downpayment, and balance due prior to closing consistent with the amounts set forth in the purchase documents and receipt for deposit if one is required by Section 18035.1. The deposits shall be made by the dealer within three working days of receipt, one of which shall be the day of receipt. For

purposes of this section, "cash equivalent" means any property, other than cash. If an item of cash equivalent is, due to its size, incapable of physical delivery to the escrow holder, the property may be held by the dealer for the purchaser until close of escrow and, if the property has been registered with the department or the Department of Motor Vehicles, its registration certificate and, if available, its certificate of title shall be delivered to the escrow holder.

(b) For every sale by a dealer of a new manufactured home or mobilehome, the escrow instructions shall provide all of the following:

(1) That the original manufacturer's certificate of origin be placed in escrow.

(2) That, in the alternative, either of the following shall occur:

(A) The lien of any inventory creditor on the manufactured home or mobilehome shall be satisfied by payment from the escrow account.

(B) The inventory creditor shall consent in writing to other than full payment.

For purposes of this paragraph, "inventory creditor" includes any person who is identified as a creditor on the manufacturer's certificate of origin or any person who places the original certificate of origin in escrow and claims in writing to the escrow agent to have a purchase money security interest in the manufactured home or mobilehome, as contemplated by Section 9107 of the Commercial Code.

(3) That the escrow agent shall obtain from the manufacturer a true and correct facsimile of the copy of the certificate of origin retained by the manufacturer pursuant to Section 18093.

(c) For every sale by a dealer of a used manufactured home or mobilehome, the escrow instructions shall provide:

(1) That the current registration card, all copies of the registration cards held by junior lienholders, and the certificate of title be placed in escrow.

(2) That, in the alternative, either of the following shall occur:

(A) (i) The registered owner shall acknowledge in writing the amount of the commission to be received by the dealer for the sale of the manufactured home or mobilehome, and (ii) the registered owner shall release all of its ownership interests in the manufactured home or mobilehome either contemporaneously upon the payment of a specified amount from the escrow account or at the close of the escrow where the buyer has executed a security agreement approved by the registered owner covering the unpaid balance of the purchase price.

(B) (i) The dealer shall declare in writing that the manufactured home or mobilehome is its inventory, (ii) the registered owner shall acknowledge in writing that the purchase price relating to the sale of the manufactured home or mobilehome to the dealer for resale has been paid in full by the dealer, (iii) the current title shall be

appropriately executed by the registered owner to reflect the release of all of its ownership interests, and (iv) the dealer shall release all of its ownership interests in the manufactured home or mobilehome either contemporaneously upon the payment of a specified amount from the escrow account or at the close of escrow where the buyer has executed a security agreement approved by the dealer covering the unpaid balance of the purchase price.

(3) That, in the alternative, the legal owner and each junior lienholder, respectively, shall either:

(A) Release his or her security interest or transfer its security interest to a designated third party contemporaneously upon the payment of a specified amount from the escrow account.

(B) Advise the escrow agent in writing that the new buyer or the buyer's stated designee shall be approved as the new registered owner upon the execution by the buyer of a formal assumption of the indebtedness secured by his or her lien approved by the creditor at or before the close of escrow.

(d) For every sale by a dealer of a used manufactured home or mobilehome:

(1) The dealer shall present the buyer's offer to purchase the manufactured home or mobilehome to the seller in written form signed by the buyer. The seller, upon accepting the offer to purchase, shall sign and date the form. Copies of the fully executed form shall be presented to both the buyer and seller, with the original copy retained by the dealer. Any portion of the form which reflects the commission charged by the dealer to the seller need not be disclosed to the buyer.

(2) The escrow agent, upon the opening of the escrow and receipt of notification from the dealer that the seller has accepted the buyer's offer to purchase, shall, within three working days, prepare a notice of escrow opening on the form prescribed by the department and forward the completed form to the department with appropriate fees. If the escrow is canceled for any reason before closing, the escrow agent shall prepare a notice of escrow cancellation on the form prescribed by the department and forward the completed form to the department.

(3) (A) The escrow agent shall forward to the legal owner and each junior lienholder at their addresses shown on the current registration card a written demand for a lien status report, as contemplated by Section 18035.5, and a written demand for either an executed statement of conditional lien release or an executed statement of anticipated formal assumption, and shall enclose blank copies of a statement of conditional lien release and a statement of anticipated formal assumption on forms prescribed by the department. The statement of conditional lien release shall include, among other things, both of the following:

(i) A statement of the dollar amount or other conditions required by the creditor in order to release or transfer its lien.

(ii) The creditor's release or transfer of the lien in the

manufactured home or mobilehome contingent upon the satisfaction of those conditions.

(B) The statement of anticipated formal assumption shall include, among other things, both of the following:

(i) A statement of the creditor's belief that the buyer will formally assume the indebtedness secured by its lien pursuant to terms and conditions which are acceptable to the creditor at or before the close of escrow.

(ii) The creditor's approval of the buyer or his or her designee as the registered owner upon the execution of the formal assumption.

(4) Within five days of the receipt of the written demand and documents required by paragraph (3), the legal owner or junior lienholder shall complete and execute either the statement of conditional lien release or, if the creditor has elected to consent to a formal assumption requested by a qualified buyer, the statement of anticipated formal assumption, as appropriate, and prepare the lien status report and forward the documents to the escrow agent by first-class mail. If the creditor is the legal owner, the certificate of ownership in an unexecuted form shall accompany the documents. If the creditor is a junior lienholder, the creditor's copy of the current registration card in an unexecuted form shall accompany the documents.

(5) If either of the following events occur, any statement of conditional lien release or statement of anticipated formal assumption executed by the creditor shall become inoperative, and the escrow agent shall thereupon return the form and the certificate of ownership or the copy of the current registration card, as appropriate, to the creditor by first-class mail:

(A) The conditions required in order for the creditor to release or transfer his or her lien are not satisfied before the end of the escrow period agreed upon in writing between the buyer and the seller or, if applicable, before the end of any extended escrow period as permitted by subdivision (g).

(B) The registered owner advises the creditor not to accept any satisfaction of his or her lien or not to permit any formal assumption of the indebtedness and the creditor or registered owner advises the escrow agent in writing accordingly.

(6) If a creditor willfully fails to comply with the requirements of paragraph (4) within 21 days of the receipt of the written demand and documents required by paragraph (3), the creditor shall forfeit to the escrow agent three hundred dollars ($300), except where the creditor has reasonable cause for noncompliance. The three hundred dollars ($300) shall be credited to the seller, unless otherwise provided in the escrow instructions. Any penalty paid by a creditor under this paragraph shall preclude any civil liability for noncompliance with Section 18035.5 relating to the same act or omission.

(e) The escrow instructions shall specify one of the following:

(1) Upon the buyer receiving delivery of an installed

manufactured home or mobilehome on the site and the manufactured home or mobilehome passing inspection pursuant to Section 18613 or after the manufactured home or mobilehome has been delivered to the location specified in the escrow instructions when the installation is to be performed by the buyer, all funds in the escrow account, other than escrow fees and amounts for accessories not yet delivered, shall be disbursed.

(2) Upon the buyer receiving delivery of an installed manufactured home or mobilehome not subject to the provisions of Section 18613 with delivery requirements as mutually agreed to and set forth in the sales documents, all funds in the escrow account, other than escrow fees, shall be disbursed.

(f) In the event any dispute arises between the parties to the escrow and upon notification in writing to the escrow agent, unless otherwise specified in the escrow instructions, all funds denoted as deposit shall be held in escrow until a release is signed by the disputing party, or pursuant to new written escrow instructions signed by the parties involved, or pursuant to a final order for payment or division by a court of competent jurisdiction. Any other funds, other than escrow fees, shall be returned to the buyer or any person, other than the dealer or seller, as appropriate.

(g) Escrow shall be for a period of time mutually agreed upon, in writing, by the buyer and the seller. However, the parties may, by mutual consent, extend the time, in writing, with notice to the escrow agent.

(h) No dealer or seller shall establish with an escrow agent any escrow account in an escrow company in which the dealer or seller has more than a 5-percent ownership interest.

(i) The escrow instructions may provide for the proration of any local property tax due or to become due on the manufactured home or mobilehome, and if the tax, or the license fee imposed pursuant to Section 18115, or the registration fee imposed pursuant to Section 18114, is delinquent, the instructions may provide for the payment of the taxes or fees, or both, and any applicable penalties.

(j) No agreement shall contain any provision by which the buyer waives his or her rights under this section, and any waiver shall be deemed contrary to public policy and shall be void and unenforceable.

(k) If a portion of the amount in the escrow is for accessories, then that portion of the amount shall not be released until the accessories are actually installed.

(*l*) This section creates a civil cause of action against a buyer or dealer or other seller who violates this section, and upon prevailing, the plaintiff in the action shall be awarded actual damages, plus an amount not in excess of two thousand dollars ($2,000). In addition, attorney's fees and court costs shall also be awarded a plaintiff who prevails in the action.

SEC. 1.5. Section 18035 of the Health and Safety Code, as amended by Section 2 of Senate Bill 519, is amended to read:

18035. (a) For every sale by a dealer of a new or used manufactured home or mobilehome subject to registration under this part, the dealer shall execute in writing and obtain the buyer's signature on a purchase order, conditional sale contract, or other document evidencing the purchase contemporaneous with, or prior to, the receipt of any cash or cash equivalent from the buyer, shall establish an escrow account with an escrow agent, and shall cause to be deposited into that escrow account any cash or cash equivalent received at any time prior to the close of escrow as a deposit, downpayment, or whole or partial payment for the manufactured home or mobilehome or accessory thereto. The downpayment, or whole or partial payment, shall include an amount designated as a deposit, which may be less than, or equal to, the total amount placed in escrow, and shall be subject to the provisions of subdivision (f). The parties shall provide for escrow instructions which identify the fixed amounts of the deposit, downpayment, and balance due prior to closing consistent with the amounts set forth in the purchase documents and receipt for deposit if one is required by Section 18035.1. The deposits shall be made by the dealer within three working days of receipt, one of which shall be the day of receipt. For purposes of this section, "cash equivalent" means any property, other than cash. If an item of cash equivalent is, due to its size, incapable of physical delivery to the escrow holder, the property may be held by the dealer for the purchaser until close of escrow and, if the property has been registered with the department or the Department of Motor Vehicles, its registration certificate and, if available, its certificate of title shall be delivered to the escrow holder.

(b) For every sale by a dealer of a new manufactured home or mobilehome, the escrow instructions shall provide all of the following:

(1) That the original manufacturer's certificate of origin be placed in escrow.

(2) That, in the alternative, either of the following shall occur:

(A) The lien of any inventory creditor on the manufactured home or mobilehome shall be satisfied by payment from the escrow account.

(B) The inventory creditor shall consent in writing to other than full payment.

For purposes of this paragraph, "inventory creditor" includes any person who is identified as a creditor on the manufacturer's certificate of origin or any person who places the original certificate of origin in escrow and claims in writing to the escrow agent to have a purchase money security interest in the manufactured home or mobilehome, as contemplated by Section 9107 of the Commercial Code.

(3) That the escrow agent shall obtain from the manufacturer a true and correct facsimile of the copy of the certificate of origin retained by the manufacturer pursuant to Section 18093.

(c) For every sale by a dealer of a used manufactured home or mobilehome, the escrow instructions shall provide:

(1) That the current registration card, all copies of the registration cards held by junior lienholders, and the certificate of title be placed in escrow.

(2) That, in the alternative, either of the following shall occur:

(A) (i) The registered owner shall acknowledge in writing the amount of the commission to be received by the dealer for the sale of the manufactured home or mobilehome, and (ii) the registered owner shall release all of its ownership interests in the manufactured home or mobilehome either contemporaneously upon the payment of a specified amount from the escrow account or at the close of the escrow where the buyer has executed a security agreement approved by the registered owner covering the unpaid balance of the purchase price.

(B) (i) The dealer shall declare in writing that the manufactured home or mobilehome is its inventory, (ii) the registered owner shall acknowledge in writing that the purchase price relating to the sale of the manufactured home or mobilehome to the dealer for resale has been paid in full by the dealer, (iii) the current title shall be appropriately executed by the registered owner to reflect the release of all of its ownership interests, and (iv) the dealer shall release all of its ownership interests in the manufactured home or mobilehome either contemporaneously upon the payment of a specified amount from the escrow account or at the close of escrow where the buyer has executed a security agreement approved by the dealer covering the unpaid balance of the purchase price.

(3) That, in the alternative, the legal owner and each junior lienholder, respectively, shall either:

(A) Release his or her security interest or transfer its security interest to a designated third party contemporaneously upon the payment of a specified amount from the escrow account.

(B) Advise the escrow agent in writing that the new buyer or the buyer's stated designee shall be approved as the new registered owner upon the execution by the buyer of a formal assumption of the indebtedness secured by his or her lien approved by the creditor at or before the close of escrow.

(d) For every sale by a dealer of a used manufactured home or mobilehome:

(1) The dealer shall present the buyer's offer to purchase the manufactured home or mobilehome to the seller in written form signed by the buyer. The seller, upon accepting the offer to purchase, shall sign and date the form. Copies of the fully executed form shall be presented to both the buyer and seller, with the original copy retained by the dealer. Any portion of the form which reflects the commission charged by the dealer to the seller need not be disclosed to the buyer.

(2) The escrow agent, upon the opening of the escrow and receipt of notification from the dealer that the seller has accepted the

buyer's offer to purchase, shall, within three working days, prepare a notice of escrow opening on the form prescribed by the department and forward the completed form to the department with appropriate fees. If the escrow is canceled for any reason before closing, the escrow agent shall prepare a notice of escrow cancellation on the form prescribed by the department and forward the completed form to the department.

(3) (A) The escrow agent shall forward to the legal owner and each junior lienholder at their addresses shown on the current registration card a written demand for a lien status report, as contemplated by Section 18035.5, and a written demand for either an executed statement of conditional lien release or an executed statement of anticipated formal assumption, and shall enclose blank copies of a statement of conditional lien release and a statement of anticipated formal assumption on forms prescribed by the department. The statement of conditional lien release shall include, among other things, both of the following:

(i) A statement of the dollar amount or other conditions required by the creditor in order to release or transfer its lien.

(ii) The creditor's release or transfer of the lien in the manufactured home or mobilehome contingent upon the satisfaction of those conditions.

(B) The statement of anticipated formal assumption shall include, among other things, both of the following:

(i) A statement of the creditor's belief that the buyer will formally assume the indebtedness secured by its lien pursuant to terms and conditions which are acceptable to the creditor at or before the close of escrow.

(ii) The creditor's approval of the buyer or his or her designee as the registered owner upon the execution of the formal assumption.

(4) Within five days of the receipt of the written demand and documents required by paragraph (3), the legal owner or junior lienholder shall complete and execute either the statement of conditional lien release or, if the creditor has elected to consent to a formal assumption requested by a qualified buyer, the statement of anticipated formal assumption, as appropriate, and prepare the lien status report and forward the documents to the escrow agent by first-class mail. If the creditor is the legal owner, the certificate of ownership in an unexecuted form shall accompany the documents. If the creditor is a junior lienholder, the creditor's copy of the current registration card in an unexecuted form shall accompany the documents.

(5) If either of the following events occur, any statement of conditional lien release or statement of anticipated formal assumption executed by the creditor shall become inoperative, and the escrow agent shall thereupon return the form and the certificate of ownership or the copy of the current registration card, as appropriate, to the creditor by first-class mail:

(A) The conditions required in order for the creditor to release or

transfer his or her lien are not satisfied before the end of the escrow period agreed upon in writing between the buyer and the seller or, if applicable, before the end of any extended escrow period as permitted by subdivision (g).

(B) The registered owner advises the creditor not to accept any satisfaction of his or her lien or not to permit any formal assumption of the indebtedness and the creditor or registered owner advises the escrow agent in writing accordingly.

(6) If a creditor willfully fails to comply with the requirements of paragraph (4) within 21 days of the receipt of the written demand and documents required by paragraph (3), the creditor shall forfeit to the escrow agent three hundred dollars ($300), except where the creditor has reasonable cause for noncompliance. The three hundred dollars ($300) shall be credited to the seller, unless otherwise provided in the escrow instructions. Any penalty paid by a creditor under this paragraph shall preclude any civil liability for noncompliance with Section 18035.5 relating to the same act or omission.

(e) For every sale by a dealer of a new or used manufactured home or mobilehome, the escrow instructions shall specify one of the following:

(1) Upon the buyer receiving delivery of an installed manufactured home or mobilehome on the site and the manufactured home or mobilehome passing inspection pursuant to Section 18613 or after the manufactured home or mobilehome has been delivered to the location specified in the escrow instructions when the installation is to be performed by the buyer, all funds in the escrow account, other than escrow fees and amounts for accessories not yet delivered, shall be disbursed.

(2) Upon the buyer receiving delivery of an installed manufactured home or mobilehome not subject to the provisions of Section 18613 with delivery requirements as mutually agreed to and set forth in the sales documents, all funds in the escrow account, other than escrow fees, shall be disbursed.

(f) In the event any dispute arises between the parties to the escrow and upon notification in writing to the escrow agent, unless otherwise specified in the escrow instructions, all funds denoted as deposit shall be held in escrow until a release is signed by the disputing party, or pursuant to new written escrow instructions signed by the parties involved, or pursuant to a final order for payment or division by a court of competent jurisdiction. Any other funds, other than escrow fees, shall be returned to the buyer or any person, other than the dealer or seller, as appropriate.

(g) Escrow shall be for a period of time mutually agreed upon, in writing, by the buyer and the seller. However, the parties may, by mutual consent, extend the time, in writing, with notice to the escrow agent.

(h) No dealer or seller shall establish with an escrow agent any escrow account in an escrow company in which the dealer or seller

has more than a 5-percent ownership interest.

(i) The escrow instructions may provide for the proration of any local property tax due or to become due on the manufactured home or mobilehome, and if the tax, or the license fee imposed pursuant to Section 18115, or the registration fee imposed pursuant to Section 18114, is delinquent, the instructions may provide for the payment of the taxes or fees, or both, and any applicable penalties.

(j) For every sale by a dealer of a new or used manufactured home or mobilehome, the escrow instructions shall provide that the payment of any fee, charge, dedication, or other form of requirement levied by a school district pursuant to Section 53080 of the Government Code be made to the appropriate school district upon the close of escrow, except where the school district has certified compliance with that fee, charge, dedication, or other form of requirement.

(k) No agreement shall contain any provision by which the buyer waives his or her rights under this section, and any waiver shall be deemed contrary to public policy and shall be void and unenforceable.

(*l*) If a portion of the amount in the escrow is for accessories, then that portion of the amount shall not be released until the accessories are actually installed.

(m) This section creates a civil cause of action against a buyer or dealer or other seller who violates this section, and upon prevailing, the plaintiff in the action shall be awarded actual damages, plus an amount not in excess of two thousand dollars ($2,000). In addition, attorney's fees and court costs shall also be awarded a plaintiff who prevails in the action.

SEC. 2. Section 18037.5 of the Health and Safety Code is amended to read:

18037.5. (a) In the event of default under the provisions of any security agreement relating to a loan or conditional sale contract which, according to its terms, gives the secured party the right to foreclose its security interest in a manufactured home, mobilehome, truck camper, or floating home subject to registration under this part which is not inventory of a dealer, including the right to repossess the property, notwithstanding any contrary provisions in the security agreement or conditional sale contract or in any other agreement entered into prior to default, the secured party may foreclose its security interest only by satisfying the requirements of this section.

(1) Unless the registered owner of the manufactured home, mobilehome, truck camper, or floating home has abandoned the property or has voluntarily surrendered possession of the property to the foreclosing creditor, the foreclosing creditor shall deposit or cause to be deposited in the United States mail an envelope addressed to each registered owner as shown on the current registration of the manufactured home, mobilehome, truck camper, or floating home, registered or certified with postage prepaid, containing a notice in substantially the following form and in at least

10-point type, which notice shall be signed by the foreclosing creditor:

NOTICE OF DEFAULT

To: _____
(names of all registered owners)

You (if the registered owner is not the person who is in default, substitute name of defaulting person(s)) are in default under the terms of the

_____
(identify security agreement by title or caption and date)

in that _____ .
(describe default)

This default gives the creditor named below the right to sell your manufactured home, mobilehome, truck camper, or floating home which is registered with the Department of Housing and Community Development under registration number(s) _____, located at
(give registration number(s))

_____
(give location of property as shown on current registration)

unless the default is promptly cured.

You may cure the default by _____
(describe conditions

_____
precedent to reinstatement required to cure default)

or by entirely repaying the outstanding secured indebtedness on or before

_____
(state final date available for cure, which date shall be no earlier than 45 days after mailing of the notice)

To cure the default you may also be required to reimburse the creditor for its reasonable attorney's fees and legal expenses and for any other sums to which the creditor may have become entitled under the terms of your credit agreement after the date of this notice. You may entirely repay the outstanding obligation by paying the creditor

_____
(state dollar amount required to obtain release of security interest, and if the amount may increase due to passage of time, state that fact)

plus any amount necessary to reimburse the creditor for its reasonable attorney's fees and legal expenses and any other sums to which the creditor may have become entitled after the date of this notice under the terms of your agreement.

(2) Within five days following the mailing of the notice of default required by paragraph (1), the foreclosing creditor shall forward a

copy thereof to the legal owner shown on the current registration card, if different than the foreclosing creditor, and to each junior lienholder shown on the current registration card, if different than the foreclosing creditor, and, effective July 1, 1985, to the department. The notice shall be forwarded to each party in the same manner as provided for mailing the original notice to the registered owner.

(3) In the event of default under the provisions of any security agreement relating to a loan or conditional sale contract which, according to its terms, gives the secured party the right to foreclose its security interest in a manufactured home, mobilehome, truck camper, or floating home, each registered owner and each junior lienholder having a security interest which is subordinate to the security interest of the foreclosing creditor shall have the right to cure the default by the methods and in the manner prescribed in the notice within 45 days after mailing of the notice to the registered owner required by paragraph (1).

(4) If the default is not cured within the time indicated on the notice required by paragraph (1), or if the property has been abandoned by the registered owner or voluntarily surrendered by the registered owner to the foreclosing creditor, the creditor may proceed to sell the property at private or public sale pursuant to the provisions of Section 9504 of the Commercial Code, except as provided in paragraph (5) and subdivision (c). The notice of sale required by Section 9504 of the Commercial Code shall not be mailed or delivered before expiration of the period for the right to cure the default, as stated in the notice required by paragraph (1), unless the property has been abandoned by the registered owner or voluntarily surrendered by the registered owner to the foreclosing creditor.

(5) Notwithstanding any contrary provisions of Section 9504 of the Commercial Code, the foreclosing creditor shall deposit or cause to be deposited in the United States mail, registered or certified with postage prepaid, an envelope containing the notice of sale addressed to each party to whom the notice of default was mailed pursuant to paragraph (2). The notice of sale shall be given at least 10 days before the date fixed for a public sale or on or after which any private sale is to be made.

(6) For purposes of this subdivision, a manufactured home, mobilehome, truck camper, or floating home shall be deemed abandoned if the foreclosing creditor gives written notice of its belief of abandonment to the registered owner as provided in this paragraph and the registered owner fails to give the foreclosing creditor written notice, prior to the appropriate date specified in the foreclosing creditor's notice, stating that the registered owner has not abandoned and does not intend to abandon the manufactured home, mobilehome, truck camper, or floating home and stating an address at which the registered owner may be served by certified mail with a summons in connection with any legal action which the foreclosing creditor may appropriately initiate. The foreclosing

creditor may give a notice of belief of abandonment only where it reasonably believes that the registered owner has abandoned the manufactured home, mobilehome, truck camper, or floating home. The notice of belief of abandonment shall be personally delivered to the registered owner or sent by registered or certified mail, with postage prepaid, to the registered owner at his or her last known address and, if there is reason to believe that the notice sent to that address will not be received by the registered owner, to any other address, if any, known to the foreclosing creditor where the registered owner may reasonably be expected to receive the notice. The notice of belief of abandonment shall be in substantially the following form in at least 10-point type:

NOTICE OF BELIEF OF ABANDONMENT

To: _____

(names of all registered owners)

This notice is given pursuant to Section 18037.5 of the Health and Safety Code concerning your manufactured home, mobilehome, truck camper, or floating home located at

_____ .

(address of manufactured home, mobilehome, truck camper, or floating home as shown on current registration)

You _____

(if the registered owner is not the person who is in default, substitute name of defaulting person(s))

are in default under the terms of the

_____

(identify security agreement or conditional sale contract by title or caption and date)

in that _____.

(describe default)

This default gives the foreclosing creditor named below the right to sell your manufactured home, mobilehome, truck camper, or floating home which is registered with the Department of Housing and Community Development under number(s)

_____

(give registration number(s))

unless the default is promptly cured. Unless the foreclosing creditor receives a written notice from you to the contrary by

_____ ,

(insert a date not less than 15 days after this notice is served personally or, if mailed, not less than 18 days after this notice is deposited in the mail)

your manufactured home, mobilehome, truck camper, or floating home will be deemed abandoned, which means that the foreclosing creditor may sell your manufactured home, mobilehome, truck camper, or floating home sooner than would otherwise be permitted by law. The written notice you must send to the foreclosing creditor shall be sent to

(address of foreclosing creditor)

and shall state both of the following:

1. Your intent not to abandon the manufactured home, mobilehome, truck camper, or floating home.

2. An address at which you may be served by certified mail with a summons in connection with any legal action which the foreclosing creditor may appropriately initiate.

(name of foreclosing creditor)

(signature of foreclosing creditor)

(b) In the event of default under the provisions of any security agreement relating to a loan or a conditional sale contract in which the collateral is a manufactured home, mobilehome, truck camper, or floating home subject to registration under this part which is inventory of a dealer or a commercial coach, the secured party may repossess and dispose of the collateral in accordance with the provisions of the security agreement or conditional sale contract and applicable law, including the provisions of Division 9 (commencing with Section 9101) of the Commercial Code. Upon repossession of a manufactured home, mobilehome, truck camper, or floating home subject to registration under this part which is inventory of a dealer or a commercial coach subject to registration under this part, the secured creditor shall prepare and forward to the department a notice of repossession on the form prescribed by the department.

(c) The proceeds of the sale of a manufactured home, mobilehome, commercial coach, truck camper, or floating home shall be applied, in the following order, to:

(1) The reasonable and necessary expenses incurred for preparing for and conducting the sale and, if the foreclosing creditor has obtained possession of the collateral prior to the disposition, the reasonable and necessary expenses for the retaking and holding of the collateral and to the extent provided for in the agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the foreclosing creditor in retaking the property from any person not a party to the credit contract.

(2) The satisfaction of the indebtedness secured by the security interest of the foreclosing creditor under which the disposition is made.

(3) The satisfaction of indebtedness secured by any subordinate liens or encumbrances on the property in the order of their priority as provided in Section 18105, if with respect to a junior creditor written notification of demand therefor is received before distribution of the proceeds is completed, and to the satisfaction of any subordinate attachment lien or execution lien pursuant to subdivision (b) of Section 701.040 of the Code of Civil Procedure if

notice of the levy of attachment or execution is received before distribution of the proceeds is completed. If requested by the foreclosing creditor, the holder of a subordinate lien or encumbrance shall furnish reasonable proof of his or her interest, and unless it does so, the foreclosing creditor need not comply with its demand.

(4) The satisfaction of indebtedness secured by all senior liens or encumbrances in the order of their priority as provided in Section 18105, if with respect to a senior creditor written demand therefor is received by the foreclosing creditor before distribution of the proceeds is completed. If requested by the foreclosing creditor, the holder of a senior lien or encumbrance shall furnish reasonable proof of his or her interest, and unless he or she does so, the foreclosing creditor need not comply with his or her demand.

(5) To the registered owner within 45 days after the sale is conducted if a surplus remains.

(d) Unless automatically provided to the registered owner within 45 days after the sale of a manufactured home, mobilehome, truck camper, or floating home if a request for an accounting is made within one year of the sale, the foreclosing creditor shall provide to the registered owner a written accounting containing the gross sales proceeds and its allocation pursuant to subdivision (c). In the event any surplus is paid to the registered owner pursuant to paragraph (5) of subdivision (c), the foreclosing creditor shall furnish such an accounting whether or not requested by the registered owner.

SEC. 3. Section 18038.7 of the Health and Safety Code is amended to read:

18038.7. No deficiency judgment shall lie in any event, after the sale of any manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration pursuant to this part, for failure of the purchaser to complete his or her sale contract given to the seller to secure payment of the balance of the purchase price of the manufactured home, mobilehome, commercial coach, truck camper, or floating home. This section shall not apply in the event there is substantial damage to the manufactured home, mobilehome, commercial coach, truck camper, or floating home other than wear and tear from normal usage.

SEC. 4. Section 18075.5 of the Health and Safety Code is amended to read:

18075.5. Manufactured homes, mobilehomes, commercial coaches, truck campers, and floating homes sold or used within this state shall be subject to annual registration with the department and payment of registration fees prescribed by Section 18114 except as follows:

(a) Manufactured homes, mobilehomes, and floating homes subject to local property taxation pursuant to Part 13 (commencing with Section 5800) of Division 1 of the Revenue and Taxation Code, and not installed on foundation systems pursuant to Section 18551, shall be subject to registration and payment of fees and penalties prescribed by Section 18114 at the time of original registration with

the department, and upon subsequent sale, resale, or transfer of title. For purposes of this section, a transfer of title includes, but is not limited to, any change, addition, or deletion of one or more registered owners, legal owners, or junior lienholders.

(b) Manufactured homes, mobilehomes, and commercial coaches installed or to be installed on foundation systems pursuant to Section 18551 shall be exempt from registration so long as they remain affixed to the foundation system. In the event that the manufactured home, mobilehome, or commercial coach, is removed from a foundation system for any purpose other than dismantling or reinstallation on a foundation system, it shall be immediately subject to registration with the department.

(c) A nonresident owner of a foreign manufactured home or mobilehome otherwise subject to registration under this code may, subject to exceptions and special provisions contained in this chapter, occupy or permit occupancy of the manufactured home or mobilehome within this state without registering the manufactured home or mobilehome in, or paying any fees to, this state, subject to the condition that the manufactured home or mobilehome at all times, when occupied in this state, is duly registered in the place of residence of the owner and displays on the manufactured home or mobilehome a valid registration issued for that manufactured home or mobilehome in the place of residence of the owner.

For the purposes of the exceptions and special provisions of this part, a registration issued by any foreign jurisdiction shall be deemed to be valid for not more than one year from the date of initial use in this state.

(d) Any nonresident owner of a foreign manufactured home or mobilehome who is a member of the armed forces of the United States on active duty within this state shall be entitled to the exemption granted under subdivision (c) under the conditions set forth therein. Any member of the armed forces, whether a resident or nonresident, shall also be entitled to exemption from registration with respect to a manufactured home or mobilehome owned by the person upon which there is displayed a valid registration issued for the manufactured home or mobilehome in a foreign jurisdiction where the owner was regularly assigned and stationed for duty by competent military orders at the time the registration was issued. Competent military orders shall not include military orders for leave, for temporary duty, nor for any other assignment of any nature requiring the owner's presence outside the foreign jurisdiction where the owner was regularly assigned and stationed for duty.

(e) Any nonresident owner of a manufactured home or mobilehome of a type subject to registration in this state who, while temporarily living within this state, accepts gainful employment within this state shall be entitled to the exemption granted under subdivision (c), but only until the expiration of the valid home state registration on the manufactured home or mobilehome which was in effect at the time the nonresident accepted gainful employment

within this state.

(f) Any nonresident owner of a manufactured home or mobilehome of a type subject to registration under this part who becomes a legal resident of this state shall be entitled to the exemption granted under subdivision (c), but only until the expiration of the valid home state registration on the manufactured home or mobilehome which was in effect at the time the owner became a resident of this state.

(g) Any person who enters California for the purpose of establishing or reestablishing residence or accepting gainful employment following his or her discharge from the armed forces of this country may occupy a manufactured home or mobilehome owned by that person at the time of his or her discharge and registered to him or her in a foreign jurisdiction where his or her military orders required his or her presence without registering the manufactured home or mobilehome in this state until the expiration of the registration period current at the time of his or her discharge and entrance into California.

(h) Any new and previously unregistered, unoccupied manufactured home, mobilehome, or commercial coach which is part of an inventory held for sale by a manufacturer or dealer in the course of business.

The department may adopt regulations for exempting additional classes of manufactured homes, mobilehomes, and commercial coaches from registration under a temporary or one-trip permit system which permits the lawful transportation and use of manufactured homes, mobilehomes, and commercial coaches not otherwise subject to registration.

(i) Floating homes, which are subject to local property taxation, as prescribed by Section 229 of the Revenue and Taxation Code, shall be subject to registration at the time of sale and upon any subsequent sale, resale, or transfer of title. Floating homes are subject to the fees prescribed by subdivision (b) of Section 18114 upon registration or reregistration.

SEC. 5. Section 18084.7 of the Health and Safety Code is amended to read:

18084.7. Manufactured homes, mobilehomes, and commercial coaches shall not be subject to registration or titling under this part or to Part 13 (commencing with Section 5800) of Division 1 of the Revenue and Taxation Code prior to the original registration of the manufactured home, mobilehome, or commercial coach. Upon original registration and issuance of title, whether in the name of a consumer, a dealership, or some other party, the manufactured home, mobilehome, or commercial coach thereafter is subject to all registration and titling requirements of this part and to the provisions of Part 13 (commencing with Section 5800) of Division 1 of the Revenue and Taxation Code.

SEC. 6. Section 18085 of the Health and Safety Code is amended to read:

18085. (a) Application for the original registration of a manufactured home, mobilehome, commercial coach, truck camper, or floating home required to be registered under this part shall be made to the department upon the appropriate forms approved by the department, and shall be accompanied by the filing fee prescribed by the department. If the application is for the original registration of a manufactured home, mobilehome, or commercial coach, or of a truck camper manufactured on or after January 1, 1986, the application shall include the original manufacturer's certificate of origin in the form prescribed by Sections 18093 and 18093.5. If the original certificate of origin is not in existence, a duplicate thereof shall be obtained from the manufacturer and submitted with the application for original registration. Any duplicate copy shall be conspicuously marked by the manufacturer as a duplicate copy.

(b) The application shall include, but not be limited to, all of the following:

(1) The true name and mailing address of the registered owner, the legal owner, if any, and junior lienholders, if any.

(2) The name of the county in which the registered owner resides.

(3) The situs address of the manufactured home, mobilehome, or commercial coach, or the residence address of a truck camper owner, or floating home owner to include the county of residence.

(4) A description of the manufactured home, mobilehome, commercial coach, truck camper, or floating home, including all of the following:

(A) The manufacturer's name and identification number.

(B) The date of manufacture.

(C) The serial number or numbers.

(D) The federal label number or numbers affixed pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.) or department insignia number or numbers affixed pursuant to Section 18026.

(E) The date first sold or leased to a purchaser or lessee for purposes other than resale.

(F) Any other information as may be reasonably required by the department to enable it to determine whether the manufactured home, mobilehome, commercial coach, truck camper, or floating home is lawfully entitled to registration.

(c) If the application is for a floating home, other evidence of ownership may be accepted at the sole discretion of the department in lieu of the manufacturer's certificate of origin.

SEC. 7. Section 18085.5 of the Health and Safety Code is amended to read:

18085.5. The department shall not accept an application for the original registration of a manufactured home, mobilehome, commercial coach, truck camper, or floating home unless the manufactured home, mobilehome, commercial coach, truck camper, or floating home at the time of application is within the state or unless the provisions of this part have been complied with.

SEC. 8. Section 18100.5 of the Health and Safety Code is amended to read:

18100.5. (a) If the title or interest of a registered owner, legal owner, junior lienholder in a manufactured home, mobilehome, commercial coach, or truck camper, or floating home for which an original registration under this part has been obtained is transferred to another person, or, if all outstanding secured obligations previously held by a legal owner registered on the original or a subsequent registration or by a junior lienholder are satisfied and the person no longer has any obligation to extend credit, incur obligations, or otherwise give value to be secured by the manufactured home, mobilehome, commercial coach, truck camper, or floating home, or, if a security interest is taken in a manufactured home, mobilehome, commercial coach, truck camper, or floating home after the permanent title record has been established, the department shall be notified within 20 days and shall act as follows:

(1) If the title or interest of a registered owner or legal owner is being transferred, the transferor and the transferee of the title or interest shall execute in the manner prescribed by the department the certificate of title for the manufactured home, mobilehome, commercial coach, truck camper, or floating home. If the transfer is made by a registered owner and the transferee is to assume the underlying indebtedness secured by the manufactured home, mobilehome, commercial coach, truck camper, or floating home and owed to a legal owner, the legal owner shall state on the certificate of title that legal title and interest are to be retained. The certificate of title along with all other supporting documents shall be fowarded to the department with appropriate fees. The department shall appropriately amend the permanent title record of the manufactured home, mobilehome, commercial coach, truck camper, or floating home, forward a new certificate of title reflecting the change to the permanent title record to the legal owner by first-class mail, and forward an amended registration card reflecting the change to the permanent title record to the registered owner with copies to all secured parties shown on the permanent title record. If there is no legal owner, the new certificate of title and amended registration card shall be forwarded to the registered owner.

(2) If the interest of a junior lienholder is being transferred, the transferor and the transferee shall execute in a manner prescribed by the department the registration card, and the card so executed shall be forwarded to the department with appropriate fees. The department shall appropriately amend the permanent title record and forward an amended registration card reflecting the change to the permanent title record to the registered owner with copies to all secured parties shown on the permanent title record.

(3) If a creditor acquires a security interest in a manufactured home, mobilehome, commercial coach, truck camper, or floating home after the permanent title record has been established, the department shall amend the permanent title record to reflect the

interest as that of a legal owner or as that of a junior lienholder, as appropriate. If the permanent title record already reflects the interest of one or more junior lienholders, the creditor then perfecting its interest pursuant to this section shall be designated as the most junior lienholder.

(4) If a legal owner no longer holds an outstanding obligation or a commitment to make advances, incur obligations, or otherwise give value to be secured by the manufactured home, mobilehome, commercial coach, or truck camper, or floating home, the legal owner shall indicate its release of lien by appropriately signing the certificate of title for the manufactured home, mobilehome, commercial coach, truck camper, or floating home and forward the certificate of title to the department with appropriate fees. The department shall appropriately amend the permanent title record for the manufactured home, mobilehome, commercial coach, truck camper, or floating home, deliver a new certificate of title reflecting the change to the permanent title record to the new legal owner, if any, by first-class mail, and forward an amended registration card reflecting the change to the permanent title record to the registered owner with copies to all secured parties shown on the registration card. For purposes of this paragraph, the following person shall be designated as the new legal owner:

(A) The junior lienholder, if any.

(B) If there is more than one junior lienholder, the junior lienholder whose statement of lien was designated as the most senior junior lienholder on the permanent title record shall be the legal owner.

(5) If a junior lienholder no longer holds an outstanding obligation or a commitment to make advances, incur obligations, or otherwise give value to be secured by the manufactured home, mobilehome, commercial coach, truck camper, or floating home, the junior lienholder shall forward the properly executed and released junior lienholder registration card to the department with appropriate fees. The department shall appropriately amend the permanent title record for the manufactured home, mobilehome, commercial coach, truck camper, or floating home and forward an amended registration card reflecting the change to the permanent title record to the registered owner with copies to all secured parties shown on the permanent title record.

(b) (1) Notwithstanding subdivision (d) of this section and subdivisions (c) and (e) of Section 18080.7, for the 120-day period beginning upon the receipt by the department of the notice of escrow and appropriate fee provided by paragraph (1) of subdivision (d) of Section 18035, or until the escrow is canceled or until the escrow closes and the resulting transfers of ownership interests and transfers or creation of legal owner and junior lienholder interests are acknowledged by the department as amendments to the permanent title record of the manufactured home, mobilehome, truck camper, or floating home, whichever is earlier, the

department, except at its sole discretion, shall impose a moratorium on all of the following:

(A) On any other amendments to the permanent title record of the manufactured home, mobilehome, truck camper, or floating home for the purpose of transferring any ownership interest or transferring or creating any security interest in the manufactured home or mobilehome.

(B) On issuing any duplicate, substitute, or new certificate of title, registration card, or copy of a registration card regarding the manufactured home, mobilehome, or floating home.

(C) On subsequent notices of escrow openings.

(2) The department shall, upon receipt of the notice of escrow and the appropriate fee, forward to the escrow agent an acknowledgment of receipt and a true and correct copy of the permanent title record as of the commencement of the period of moratorium.

(c) If a secured party fails to comply with the provisions of subdivision (a) relating to releases of lien and the secured party thereafter receives a written demand from the registered owner that the secured party release its lien, the secured party shall be liable to the registered owner for all actual damages suffered by the registered owner by reason of the failure to release the lien unless the secured party, within 20 days of receipt of the demand, complies with the requirements of subdivision (a), except where the secured party has reasonable cause for noncompliance.

(d) Whenever the title or interest of the registered owner or legal owner in or to a manufactured home, mobilehome, commercial coach, truck camper, or floating home registered under this part passes to another in a manner other than by voluntary transfer, the new registered owner or legal owner may obtain a transfer of registration upon application therefor and upon presentation of the last certificate of title, if available, and current registration card, if available, issued for the manufactured home, mobilehome, commercial coach, truck camper, or floating home and any instruments or documents of authority or certified copies thereof as may be required by the department, or required by law, to evidence or effect the transfer of title or interest in that case. The department, when satisfied of the genuineness and regularity of the transfer, shall amend the permanent title record of the manufactured home, mobilehome, commercial coach, truck camper, or floating home, issue a new current registration card and certificate of title, and forward copies of the current registration card to all junior lienholders.

(e) The department shall not transfer registration until the applicant complies with the requirements of Section 18092.7.

SEC. 9. Section 18102.5 of the Health and Safety Code is amended to read:

18102.5. If application is made to the department for a transfer of registration of a manufactured home, mobilehome, commercial

coach, truck camper, or floating home to a new registered or legal owner and if the applicant is unable to present the certificate of title or registration card issued for the manufactured home, mobilehome, commercial coach, truck camper, or floating home because it is lost or otherwise not available, the department may receive the application and investigate the circumstances of the case and may require the filing of certifications or other information. When the department is satisfied that the applicant is entitled to a transfer of registration, the department may transfer the registration of the manufactured home, mobilehome, commercial coach, truck camper, or floating home and issue a new certificate of title and registration card to the person or persons found to be entitled thereto.

SEC. 10. Section 18105.5 of the Health and Safety Code is amended to read:

18105.5. A legal owner or junior lienholder may assign title or interest to a manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration under this part without the consent, and without affecting the interest of the registered owner or other lienholders.

SEC. 11. Section 18109 of the Health and Safety Code is amended to read:

18109. Except as otherwise provided in this part, every registration card for a manufactured home, mobilehome, or commercial coach subject to annual registration shall expire at midnight on the expiration date indicated on the registration card and shall be renewed prior to that expiration. The department, upon presentation by the registered owner of the registration card or potential registration card last issued and receipt of the proper renewal fees, shall renew the registration of a manufactured home, mobilehome, or commercial coach.

SEC. 12. Section 19968 of the Health and Safety Code is repealed.

SEC. 13. Section 19976.05 is added to the Health and Safety Code, to read:

19976.05. "Quality assurance agency" means a private organization meeting the requirements specified in regulations of the department to perform in-plant inspections of the construction of factory-built housing.

SEC. 14. Section 19981 of the Health and Safety Code is amended to read:

19981. (a) All factory-built housing bearing an insignia of approval pursuant to Section 19980 shall be deemed to comply with the requirements of all ordinances or regulations enacted by any city, city and county, county, or district which may be applicable to the construction of housing.

(b) No factory-built housing bearing a department insignia of approval pursuant to Section 19980 shall be in any way modified prior to installation unless approval is first obtained from the department.

(c) No factory-built housing shall be in any way modified during installation unless approval for such modification is first obtained

from the local enforcement agency.

SEC. 15. Section 19985 of the Health and Safety Code is amended to read:

19985. If the department determines that standards for the construction of factory-built housing, which have been prescribed by the statutes or rules and regulations of other states, are at least equal to the standards of the State Building Standards Code and the other requirements prescribed by the department, the department may so provide by regulation. Any factory-built housing which a state has approved as meeting its standards for construction shall be deemed to meet the requirements of the department, if the department determines that the standards of that other state are actually being enforced.

SEC. 16. Section 19990 of the Health and Safety Code is amended to read:

19990. (a) Except as provided in Section 18930, the department shall adopt rules and regulations to interpret and make specific this part. The department shall adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of this division for the purposes described in this section. Standards adopted, amended, or repealed from time to time by the department pursuant to this chapter shall include provisions imposing requirements reasonably consistent with recognized and accepted standards contained in the most recent editions of the following uniform industry codes as adopted or amended from time to time by the organizations specified:

(1) The Uniform Housing Code of the International Conference of Building Officials.

(2) The Uniform Building Code of the International Conference of Building Officials.

(3) The Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials.

(4) The Uniform Mechanical Code of the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials.

(5) The National Electrical Code of the National Fire Protection Association.

(b) The department shall require every city and county to file with the department all wind pressure and snow load requirements in effect within their respective jurisdictions if these requirements differ from building standards published in the State Building Standards Code, on or before January 1 of each year. The department shall notify every manufacturer of factory-built housing of these requirements on or before March 1 of each year.

(c) Except as provided in Section 18930, the department shall adopt other rules and regulations as it deems necessary to carry out this part. In promulgating these other rules and regulations the department shall consider any amendments to the uniform codes referred to in this section. In the event of any conflict with respect

to factory-built housing between Part 1.5 (commencing with Section 17910) and this part, the requirements of this part shall control.

SEC. 17. Section 19991 of the Health and Safety Code is amended to read:

19991. The department shall enforce every provision of this part, the building standards published in the State Building Standards Code relating to factory-built housing, and the other regulations adopted pursuant to this part, except as provided in Sections 19991.1, 19991.3, 19991.4, and 19992.

SEC. 18. Section 19991.4 is added to the Health and Safety Code, to read:

19991.4. The department may provide by regulation for the qualification and disqualification of quality assurance agencies to perform inspections of factory-built housing manufacturers. Quality assurance agencies shall act on behalf and subject to the supervision of the department and shall exercise the powers of the department with respect to these inspections, as provided by regulations of the department. These regulations shall specifically provide for the absence of any conflict of interest between manufacturers and quality assurance agencies and for department oversight of the performance quality assurance agencies.

SEC. 19. Section 19995 of the Health and Safety Code is amended to read:

19995. Except as provided in Section 18945, the department shall hear appeals brought by any person regarding the application to such person of any building standard published in the State Building Standards Code relating to factory-built housing or to any other rule or regulation of the department promulgated pursuant to this part. Any such appeals shall first be submitted to the local enforcement agency, if any, delegated by the department to enforce the provisions of this part. The department shall not hear any appeal regarding any local ordinance, rule, or regulation related to the installation of factory-built housing.

SEC. 20. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. 21. Section 2 of this bill incorporates amendments to Section 18035 of the Health and Safety Code proposed by both this bill and SB 519. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1988, (2) each bill amends Section 18035 of the Health and Safety Code, and (3) this bill is enacted after SB 519, in which case Section 18035 of the Health and Safety Code, as amended by SB 519, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 892

An act to add Section 12598 to the Government Code, relating to charitable trusts.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. It is the intent of the Legislature to require that the fiscal burden of supervising charities within the State of California be shared by the charitable organizations and individuals whose conduct makes necessary charitable trust enforcement actions by the Attorney General. The Attorney General's powers and authority with respect to regulation of religious corporations is governed by Section 9230 of the Government Code and nothing in this act is intended to alter or supersede that section.

It is the purpose of this act to allow the Attorney General to recover, by court order, all of the actual costs incurred by his or her office in conducting any charitable trust enforcement action that results in pecuniary benefits for charity. These recoverable costs shall include costs of audits performed by the Attorney General in preparing the charitable trust enforcement action.

It is the purpose of this act to require a court, at the time of entering judgment or approving settlement in a pending charitable trust enforcement case, to award recovery of costs to the Attorney General which shall be paid by the charitable organization and the individuals that are named as defendants in the action, pursuant to direction of the court.

SEC. 2. Section 12598 is added to the Government Code, to read:

12598. (a) The primary responsibility for supervising charitable trusts in California, for insuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations, resides in the Attorney General. The Attorney General has broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities. These powers include, but are not limited to, charitable trust enforcement actions under all of the following:

(1) This article.

(2) Chapter 1 (commencing with Section 2215) and Chapter 2 (commencing with Section 2250) of Title 8 of Part 4 of Division 3 of the Civil Code.

(3) Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code.

(4) Sections 328, 1080, 15004, 15409, 15680 to 15685, 16060 to 16062, 16064, and 17200 to 17210, inclusive, of the Probate Code.

(5) Chapter 5 (commencing with Section 17200) of Part 2 of

Division 7 of the Business and Professions Code, and Sections 17500 and 17535 of the Business and Professions Code.

(6) Sections 319, 326.5, and 532d of the Penal Code.

(b) The Attorney General shall be entitled to recover from defendants named in a charitable trust enforcement action all actual costs incurred in conducting that action, including the costs of auditors, consultants, and experts employed or retained to assist with the investigation, preparation, and presentation in court of the charitable trust enforcement action.

(c) Costs shall be recovered by the Attorney General pursuant to court order. At the time of entering judgment or approving settlement of a charitable trust enforcement action, as defined in subdivision (a), the court shall make findings on whether the Attorney General's action has resulted in pecuniary benefits or corrected a breach of trust for any charitable organization, or charitable purpose. If the court finds in the affirmative, the court shall award recovery of costs in the charitable trust enforcement action to the Attorney General and shall order that costs be paid by the charitable organization and the individuals named as defendants in or otherwise subject to the action, in a manner that the court finds to be equitable and fair. The court shall not award costs pursuant to this subdivision which exceed one-third of the pecuniary benefit to any charitable organization or charitable purpose realized by the Attorney General's action.

(d) All moneys received by the Department of Justice pursuant to this section shall be deposited into the General Fund and shall be used to offset the costs of future charitable trust enforcement actions by the Attorney General.

(e) Upon a finding by the court that a lawsuit filed by the Attorney General was frivolous or brought in bad faith, the court may award the defendant charity the costs of that action.

CHAPTER 893

An act to add Sections 40445.5 and 40715 to the Health and Safety Code, relating to the South Coast Air Quality Management District.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 40445.5 is added to the Health and Safety Code, to read:

40445.5. (a) The south coast district board shall conduct hearings on the adoption and implementation of intermittent transportation controls which shall be applicable, upon order of the south coast district board, during periods in the months of June to October,

inclusive, when an air pollution emergency, as defined in the Air Pollution Emergency Plan of the state board, has been called pursuant to the authority of the south coast district under Section 40444 to implement that plan.

(b) The south coast district board shall conduct the hearings pursuant to subdivision (a) to define and designate the necessary transportation controls in cooperation with representatives of industry, transportation, and local governments in the south coast district.

(c) The south coast district board shall incorporate its findings and determinations into the south coast district air quality management plan.

SEC. 2. Section 40715 is added to the Health and Safety Code, to read:

40715. (a) Except as provided in subdivision (d), every district board which has adopted an emergency episode plan for ozone or oxidant may conduct hearings on the adoption and implementation of intermittent transportation controls which shall be applicable, upon order of the district board, during periods in the months of June to October, inclusive, when an air pollution emergency, as defined in the Air Pollution Emergency Plan of the state board, has been called.

(b) The district board, in cooperation with representatives of industry, transportation, and local governments in the district, shall conduct the hearings pursuant to subdivision (a) to define and designate the necessary transportation controls. The district board shall prepare and submit to the Legislature within one year a report on the findings from the hearings.

(c) The district board shall incorporate its findings and determinations into the district air quality management plan.

(d) Notwithstanding subdivisions (a) to (c), inclusive, in that portion of the bay district which is subject to the jurisdiction of the Metropolitan Transportation Commission, the commission, at the request of the bay district, shall undertake those duties and responsibilities set forth in subdivisions (a) to (c), inclusive, that relate to the conduct of hearings and the adoption and implementation of intermittent transportation controls and that relate to making recommended findings and determinations for the bay district for incorporation into the bay district's air quality management plan.

SEC. 3. The South Coast Air Quality Management District Board shall prepare and submit to the Legislature on or before January 1, 1989, a report on its findings from the hearings held pursuant to Section 40445.5 of the Health and Safety Code.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or 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 894

An act to amend Section 1043 of the Probate Code, and to amend Section 16810 of the Revenue and Taxation Code, relating to decedents.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 1043 of the Probate Code is amended to read:

1043. An executor or administrator to whom letters are issued on the estate of a nonresident decedent by a court of competent jurisdiction of any state or territory of the United States desiring to collect any claim or receive any personal property in this state of such decedent and remove that collected or received to the jurisdiction in which his or her letters are issued, shall publish in some newspaper of general circulation published in the county where the debtor resides or the property is located, if there be one, if not, then in some newspaper of general circulation in the county, notice to all persons interested in said estate as creditors or as heirs, legatees or devisees. The notice shall set forth the names and addresses of the decedent and the person in this state indebted to or holding personal property of the decedent, shall state that the executor or administrator desires to collect a claim or receive personal property and remove that collected or received, and shall require all persons having claims against the decedent or an interest in his or her estate and wishing to object to such removal to give written notice thereof to the person indebted to or holding personal property of the decedent within three months after the first publication of the notice. Publication shall be pursuant to Section 6064 of the Government Code.

Upon the expiration of three months after the first publication of said notice, if the person so indebted to or holding personal property of the decedent either has not received written notice from any person claiming as a creditor, heir, devisee or legatee and objecting to such removal, or has received the consent of such person, then he or she may pay such debt or deliver such personal property to the executor or administrator, upon receipt of the following:

(1) An affidavit of the executor or administrator that valid letters were issued to him or her by a court of competent jurisdiction of a named state or territory of the United States on the estate of a nonresident decedent and averring to the best of his or her

knowledge and belief that no other letters on said estate are then outstanding, that no petition for such letters is then pending in this state, that no ancillary proceedings will be brought, and that there are no unpaid creditors of the decedent or the estate in this state who have not consented to such removal;

(2) An authenticated copy of his or her letters;

(3) An affidavit showing publication of the notice required under this section and be discharged from further liability and responsibility for the debt or property, without the necessity of inquiring into the truth of any of the facts stated in the foregoing documents.

"Person" as used herein includes a partnership, association, firm or corporation.

If the person indebted to or holding personal property of the decedent maintains branch offices, the publication shall be in the county where it is located, and the notices and consents by claimants shall be given to, the office or branch at which the account evidencing the indebtedness or credit is carried, or at which the personal property is located or controlled.

SEC. 2. Section 16810 of the Revenue and Taxation Code is amended to read:

16810. The tax imposed by this part is a lien in the manner prescribed in Section 13610 upon the property transferred from the time the generation skipping transfer is made and until the expiration of 10 years from and after the time a deficiency determination is issued pursuant to the provisions of this part or until the tax is paid, whichever is earlier.

CHAPTER 895

An act to amend Section 25351.1 of the Health and Safety Code, relating to hazardous substances, and making an appropriation therefor.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 25351.1 of the Health and Safety Code is amended to read:

25351.1. Notwithstanding Section 13340 of the Government Code, there is hereby transferred annually from the state account to the Hazardous Substance Clearing Account, and appropriated therefrom, an amount of not more than five million dollars ($5,000,000) which is required to pay the principal of, and interest on, bonds sold pursuant to Article 7.5 (commencing with Section 25385) to the extent that the funds in the Hazardous Substance Clearing

Account and the Superfund Bond Trust Fund are insufficient to pay the principal of, and interest on, these bonds.

CHAPTER 896

An act to amend Sections 52335, 52335.2, 52335.4, and 52335.5 of, and to add Sections 52335.25, 52335.6, 52335.7, and 52335.8 to, the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 52335 of the Education Code is amended to read:

52335. Commencing with the 1988–89 fiscal year, funds for regional occupational centers and programs shall be apportioned in accordance with this article.

For purposes of this article, "ROC/P" means regional occupational center or program.

SEC. 2. Section 52335.2 of the Education Code is amended to read:

52335.2. The Superintendent of Public Instruction shall calculate a revenue limit for each ROC/P in the following manner:

(a) Calculate a base revenue limit per unit of average attendance for the current fiscal year as follows:

(1) Divide the revenue limit for the prior year computed pursuant to this section by the annual units of average daily attendance funded in the prior year pursuant to subdivisions (c) and (d).

(2) Increase the amount computed in paragraph (1) by the percentage inflation adjustment specified in the Budget Act for the current fiscal year multiplied by the statewide average ROC/P revenue limit per unit of average daily attendance for the prior fiscal year.

(b) Calculate a revenue limit per unit of average daily attendance for program growth by increasing the revenue limit per unit of average daily attendance for program growth computed pursuant to this subdivision for the prior fiscal year by the percentage inflation adjustment specified in the Budget Act for the current fiscal year.

(c) Multiply the amount computed pursuant to subdivision (a) by the lesser of the ROC/P's annual units of average daily attendance for the current fiscal year or the ROC/P's annual units of funded average daily attendance for the prior fiscal year.

(d) Subtract the ROC/P's annual units of funded average daily attendance for the prior fiscal year from the ROC/P's annual units

of average daily attendance for the current fiscal year and multiply the difference by the amount computed pursuant to subdivision (b). If the product computed pursuant to this subdivision is negative, it shall be deemed to be zero.

(e) Except as provided in Section 52335.3, the Superintendent of Public Instruction shall apportion to the ROC/P the sum of the amounts computed pursuant to subdivisions (c) and (d).

(f) The average daily attendance used for purposes of this section shall not include the average daily attendance in schools receiving funding pursuant to Section 52324.6.

SEC. 3. Section 52335.25 is added to the Education Code, to read:

52335.25. For the 1988–89 fiscal year only, the Superintendent of Public Instruction shall calculate "annual units of funded average daily attendance for the prior fiscal year" for the purposes of Section 52335.2 for each ROC/P, as follows:

(a) (1) Calculate the actual funded average daily attendance in 1986–87.

(2) Calculate the sum of the base and allowed average daily attendance in 1986–87.

(3) Calculate the allowed growth average daily attendance for the 1987–88 fiscal year only.

(4) Calculate the actual funded average daily attendance in 1987–88.

(b) If the amount calculated for a ROC/P pursuant to paragraph (1) of subdivision (a) is less than or equal to the amount calculated pursuant to paragraph (2) of subdivision (a), subtract the amount in paragraph (1) of subdivision (a) from the amount in paragraph (2) of subdivision (a), multiply that result by the factor 0.5, and add that product to the amount in paragraph (1) of subdivision (a).

(c) If the amount calculated for a ROC/P pursuant to paragraph (1) of subdivision (a) is greater than the amount calculated pursuant to paragraph (2) of subdivision (a), subtract the amount in paragraph (2) of subdivision (a) from the amount in paragraph (1) of subdivision (a), multiply that result by the factor 0.5, and add that product to the amount in paragraph (2) of subdivision (a).

(d) Add to the amounts computed in subdivisions (b) and (c), as appropriate for each ROC/P, the amount calculated pursuant to paragraph (3) of subdivision (a).

(e) For each ROC/P for which subdivision (b) is applicable, the "annual units of funded average daily attendance for the prior fiscal year" shall be the lesser of paragraph (4) of subdivision (a) or subdivision (d).

(f) For each ROC/P for which subdivision (c) is applicable, the "annual units of funded average daily attendance for the prior fiscal year" shall be subdivision (d).

(g) The Superintendent of Public Instruction shall calculate the number of units of average daily attendance funded in 1987–88 which are in excess of the statewide total number of "annual units of funded average daily attendance for the prior fiscal year" pursuant to

subdivisions (e) and (f). These excess units of funded average daily attendance shall be allocated on a pro rata basis to ROC/Ps for which the amount in paragraph (4) of subdivision (a) exceeds the amount in subdivision (d), based on each ROC/P's number of funded units of average daily attendance in exess of subdivision (d) in relation to the total number of funded units of average daily attendance in excess of subdivision (d).

These allocations shall increase a ROC/P's "annual units of funded average daily attendance for the prior fiscal year" as calculated pursuant to subdivision (e) or (f).

SEC. 4. Section 52335.4 of the Education Code is amended to read:

52335.4. The Superintendent of Public Instruction shall determine each ROC/P's share of funded growth average daily attendance by computing the sum of subdivisions (a), (b), and (c):

(a) Subtract the ROC/P's annual units of funded average daily attendance for the prior year from the ROC/P's annual units of funded average daily attendance for the second prior year. If the amount computed pursuant to this subdivision is negative, it shall be deemed to be zero.

(b) Allocate 25 percent of the allowable growth average daily attendance funded in the Budget Act to low participation ROC/P's, pursuant to criteria established by the Superintendent of Public Instruction.

(c) (1) Subtract the statewide sum of the growth average daily attendance computed pursuant to subdivisions (a), and (b) from the allowable growth in average daily attendance funded in the Budget Act. If the amount computed is negative, it shall be deemed to be zero.

(2) Calculate the ROC/P's pro rata share of the funded growth average daily attendance calculated pursuant to paragraph (1), based on the percentage of average daily attendance funded in the prior year in relation to the total statewide average daily attendance in the prior year.

In calculating the pro rata share of funded growth average daily attendance, the Superintendent of Public Instruction shall ensure that each ROC/P is provided at least 10 units of allowed growth average daily attendance pursuant to subdivisions (b) and (c).

SEC. 5. Section 52335.5 of the Education Code is amended to read:

52335.5. In the event that the funds appropriated for purposes of this article are insufficient to fully fund the apportionments herein authorized, the Superintendent of Public Instruction shall reduce the amounts computed pursuant to Section 52335.2 for each ROC/P based on equal amounts per unit of average daily attendance, consistent with the following priorities:

(a) First priority shall be given to fully funding average daily attendance that is less than or equal to the average daily attendance funded in the prior fiscal year.

(b) Second priority shall be given to fully funding each ROC/P's share of funded growth average daily attendance determined pursuant to Section 52335.4.

(c) Third priority shall be given to funding current year annual average daily attendance that exceeds the sum of the average daily attendance specified in subdivisions (a) and (b).

SEC. 6. Section 52335.6 is added to the Education Code, to read:

52335.6. For purposes of allocating allowable growth average daily attendance to low participation ROC/Ps, the Superintendent of Public Instruction shall:

(a) Calculate for each ROC/P the prior year average daily attendance in grades 9 to 12, inclusive, for the school districts served by the ROC/P.

(b) Divide the funded average daily attendance of the ROC/P for the prior year by the amount calculated in subdivision (a).

(c) Divide the statewide funded ROC/P average daily attendance for the prior year by the prior year statewide average daily attendance in grades 9 to 12, inclusive.

(d) For each ROC/P where the amount calculated in subdivision (b) is less than the amount calculated in subdivision (c), calculate the ROC/P's pro rata share of allowable growth daily attendance for low participation ROC/Ps, based on the average daily attendance needed by the ROC/P to be at the percentage of participation calculated in subdivision (c) in relation to the total of average daily attendance needed by low participation ROC/Ps for each ROC/P to be at the percentage of participation calculated in subdivision (c).

SEC. 7. Section 52335.7 is added to the Education Code, to read:

52335.7. (a) For any fiscal year in which the Superintendent of Public Instruction determines that the allowable growth in average daily attendance funded in the Budget Act represents less than 2-percent growth in relation to the funded average daily attendance of ROC/Ps in the prior year, the superintendent shall not allocate funds for ROC/P growth pursuant to subdivision (b) of Section 52335.4, but shall allocate growth funds exclusively in accordance with subdivisions (a) and (c) of Section 52335.4.

(b) Effective July 1, 1991, the Superintendent of Public Instruction shall not allocate funds for ROC/P growth pursuant to subdivision (b) of Section 52335.4, unless funds for such purpose are specifically appropriated in the Budget Act.

SEC. 8. Section 52335.8 is added to the Education Code, to read:

52335.8. (a) On or before April 15, 1988, the State Department of Education shall report to the Legislative Analyst and the Department of Finance the projected revenue limits and average daily attendance entitlements for each ROC/P for the 1988–89 fiscal year.

(b) On or before December 1, 1990, the State Department of Education shall report to the Legislative Analyst and the Department of Finance the changes in revenue limits and average daily attendance entitlements for ROC/Ps from the 1987–88 fiscal

year to the 1990–91 fiscal year and shall make findings and recommendations concerning the effectiveness of the provisions of the act adding this section relative to achieving equity in allocating funds and average daily attendance.

SEC. 9. Sections 1 to 7, inclusive, of this act shall become operative July 1, 1988.

SEC. 10. The sum of six thousand five hundred dollars ($6,500) is hereby appropriated from the General Fund to the California State Council on Vocational Education in augmentation of Item 6320-001-001 of Section 2.00 of the Budget Act of 1987, (Chapter 135, Statutes of 1987) for the replacement of office automation equipment.

CHAPTER 897

An act to amend Section 53158 of the Government Code, and to amend Section 1203.1 of the Penal Code, relating to emergency response.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 53158 of the Government Code is amended to read:

53158. It is not the intent of the Legislature, in enacting this article, to occupy the field of recovery of the expense of an emergency response by a public agency, nor is it the intent of the Legislature to preempt local regulations or to otherwise limit the remedies available to any public agency to recover the expenses of an emergency response to any incident not involving persons who operate a motor vehicle, a boat or vessel, or a civil aircraft while under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug. It is the intent of the Legislature that the recovery of the expenses of an emergency response under this chapter shall supplement and shall not supplant any other provisions of law relating to the recovery of those expenses.

SEC. 2. Section 1203.1 of the Penal Code, as amended by Section 2 of Chapter 1503 of the Statutes of 1985, 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 the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those 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 case; however, where the maximum possible term of the sentence is five years or less, then the 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 a sum not to exceed the maximum fine provided by law in the 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 Restitution Fund. 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, provided, that payment need not be forwarded to a victim until 180 days from the date the first such payment is received, if the restitution payments for that victim received by the probation department total less than fifty dollars ($50). 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 180 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 a road camp, farm, or other public work instead of in jail; 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. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county. In all cases of probation the court may 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 them to the probation officer and apply those earnings as directed by the court.

The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

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 his or her 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.

Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

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 that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the 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. However, 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, those of each probationer shall be taken and a record of them kept and preserved.

Notwithstanding any other provisions of law to the contrary, except as provided in Sections 13967 and 13967.5 of the Government Code and Sections 1202.4, 1203.04, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, 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 10 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. 3. Section 1203.1 of the Penal Code, as amended by Section 5 of Chapter 980 of the Statutes of 1984, 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 the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those 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 case; however, where the maximum possible term of the sentence is five years or less, then the 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 a sum not to exceed the maximum fine provided by law in the 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 Restitution Fund. In counties or cities and counties where road camps, farms, or other public work is available, the court may place the probationer in such a road camp, farm, or other public work instead of in jail. 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. Each county board of supervisors may provide public work and fix the scale of compensation of the adult probationers in that county. 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 them to the probation officer and apply those earnings as directed by the court.

The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

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 his or her 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.

Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

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 that breach and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the 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. However, 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, those of each probationer shall be taken and a record of them kept and preserved.

Notwithstanding any other provision of law, except as provided in Sections 13967 and 13967.5 of the Government Code and Sections 1202.4, 1203.04, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, 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.

CHAPTER 898

An act to amend Sections 139 and 3209.5 of the Labor Code, relating to labor.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 139 of the Labor Code is amended to read:

139. The administrative director shall appoint a Medical and Chiropractic Advisory Committee composed of 10 members, seven of whom shall be physicians and surgeons who hold an M.D. degree and are certificated to practice medicine in this state, and two of whom shall be physicians and surgeons who hold a D.O. degree and are certificated to practice osteopathic medicine in this state. One member of the Medical and Chiropractic Advisory Committee shall be a chiropractor licensed to practice chiropractic in this state. The seven physician and surgeon, M.D., and two physician and surgeon, D.O., members of the advisory committee shall represent medical specialties concerned with the treatment of industrial injury and disease. The physician and surgeon, M.D., members shall be appointed after consultation with statewide and local associations of the medical profession. The physician and surgeon, D.O., members shall be appointed after consultation with the statewide association of the osteopathic medical profession. The physician and surgeon members shall be appointed for two-year staggered terms. The chiropractic member shall be appointed after consultation with statewide and local associations of the chiropractic profession for a term of two years. Vacancies shall be filled by appointment for the unexpired terms. Members shall receive actual necessary traveling expenses and a per diem of one hundred dollars ($100) for each day spent in meetings of the Medical and Chiropractic Advisory Committee. The Medical and Chiropractic Advisory Committee members shall counsel and assist the medical director and shall perform other duties as the administrative director may direct.

The members of the Medical and Chiropractic Advisory Committee shall, within the scope of each member's professional training, do all the following:

(a) Maintain liaison with the medical and chiropractic professions.

(b) Assist in recruiting doctors for the medical bureau.

(c) Advise the medical director as to selection and removal of independent medical or chiropractic examiners.

(d) Assist, within the scope of each member's professional training, in developing guidelines for determination of disputed questions of clinical fact.

(e) Suggest standards for improving care furnished injured employees.

(f) Undertake continuing studies of developments in the field of rehabilitation, and continuously inform treating physicians and surgeons and chiropractors of these developments.

(g) Advise the division regarding reasonable levels of fees for physicians and surgeons and chiropractors performing services under this code.

The administrative director shall appoint for renewable terms of two years, independent expert medical examiners in each of the respective specialties as may be required. The administrative director shall appoint for renewable terms of two years, independent expert chiropractic examiners.

Assignment of cases to independent examiners shall be made at the request of the administrative director, the secretary of the appeals board, or a workers' compensation judge by the medical director or his or her assistant in each office where a unit of the medical bureau is maintained or by the workers' compensation judge in charge in other offices of the division. Insofar as possible, a rotation method of assignment of independent medical or expert chiropractic examiners shall be followed.

The examiners shall conduct examinations and report their findings and opinions in accordance with guidelines developed for that purpose by the medical director of the division.

Payment for the examination shall be made by the Division of Industrial Accidents from funds appropriated for that purpose or for the support of the division's medical bureau, or in accordance with Section 5703.5.

SEC. 2. Section 3209.5 of the Labor Code is amended to read:

3209.5. Medical, surgical, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, includes but is not limited to services and supplies by physical therapists and chiropractic practitioners as licensed by California state law and within the scope of their practice as defined by law.

CHAPTER 899

An act to amend Section 88091 of the Education Code, relating to classified employees.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 88091 of the Education Code is amended to read:

88091. (a) All vacancies in the classified service shall be filled pursuant to this article and the rules of the commission, from

applicants on eligibility lists which, wherever practicable, as determined by the commission, shall be made up from promotional examinations, or appointments may be made by means of transfer, demotion, reinstatement, and reemployment in accordance with the rules of the commission. All applicants for promotional examinations shall have the required amount of service in classes designated by the commission or meet the minimum qualifications of education, training, experience, and length of service, which shall be determined by the commission to be appropriate for the class for which they have applied. Any promotional applicant who has served the required amount of time in a designated class or who meets the minimum qualifications for admission to a promotional examination shall be admitted to the examination. Applicants shall be placed on the eligibility lists in the order of their relative merit as determined by competitive examinations. The final scores of candidates shall be rounded to the nearest whole percent for all eligibles. All eligibles with the same percentage score will be considered as having the same rank. Appointments shall be made from the eligibles having the first three ranks on the list who are ready and willing to accept the position.

(b) Upon the request of a majority of the members of the governing board of a community college district, the commission may exempt two executive secretarial positions from the requirements of this section. Exemptions authorized under this subdivision shall be limited to one executive secretary position reporting directly to members of the governing board, and one executive secretary position reporting directly to the chancellor.

Any person employed in an exempt executive secretarial position shall continue to be afforded all of the rights, benefits, and burdens of any other classified employee serving in the regular service of the district, except he or she shall not attain permanent status in an executive secretarial position. Positions of executive secretary shall be filled from an unranked list of eligible employees who have been found to be qualified for the positions as specified by the district superintendent and determined by the personnel commission. Any person whose services in an executive secretarial position are discontinued for a cause other than a cause for disciplinary action specified in this code or in a rule of the commission shall have the right to return to a position in a classification he or she previously occupied or, if that classification no longer exists, in a similar classification, as determined by the commission. This subdivision shall apply only to the employees hired on or after January 1, 1988.

Nothing contained in this section shall authorize the selection of eligible candidates in circumvention of the affirmative action programs of any community college district.

CHAPTER 900

An act to amend Sections 22010, 22206, 22210, 24010, 24206, 24210, 26010, 26206, and 26210 of the Financial Code, relating to financial institutions.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 22010 of the Financial Code is amended to read:

22010. "Personal property broker" and "broker" do not include employees regularly employed at the particular location specified in the license of the personal property broker or broker except that an employee, when acting within the scope of his or her employment, shall be exempt from any other law from which his or her employer is exempt.

SEC. 2. Section 22206 of the Financial Code is amended to read:

22206. Upon the filing of an application pursuant to Section 22201 or 22201.1 and the payment of the fees, the commissioner shall investigate the applicant, and its general partners and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests if the applicant is a partnership, and its officers, directors, and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities if the applicant is a corporation, trust, or association (including an unincorporated organization). If the commissioner determines that the applicant has satisfied this division and does not find facts constituting reasons for denial as specified in Section 22210, the commissioner shall issue and deliver a license to the applicant to engage in business in accordance with this division.

SEC. 3. Section 22210 of the Financial Code is amended to read:

22210. (a) Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for any of the following reasons:

(1) A false statement of a material fact has been made in the application.

(2) Any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has, within the last 10 years, (i) been convicted of or pleaded nolo contendere to a crime, or (ii) committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.

(3) The applicant or any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or

more of the outstanding interests or equity securities of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of a foreign jurisdiction.

(b) The application shall be considered withdrawn within the meaning of this section if the applicant fails to respond to a written notification of a deficiency in the application within 90 days of the date of the notification.

(c) The commissioner shall within 60 days from the filing of a full and complete application for a license with the fees, either issue a license or file a statement of issues prepared 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 24010 of the Financial Code is amended to read:

24010. "Consumer finance lender" and "broker" do not include employees regularly employed at the particular location specified in the license of the consumer finance lender or broker except that an employee, when acting within the scope of his or her employment, shall be exempt from any other law from which his or her employer is exempt.

SEC. 5. Section 24206 of the Financial Code is amended to read:

24206. Upon the filing of an application pursuant to Section 24201 or 24201.1 and the payment of the fees, the commissioner shall investigate the applicant, and its general partners and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests if the applicant is a partnership, and its officers, directors, and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities if the applicant is a corporation, trust, or association (including an unincorporated organization). If the commissioner determines that the applicant has satisfied this division and does not find facts constituting reasons for denial as specified in Section 24210, the commissioner shall issue and deliver a license to the applicant to engage in business in accordance with this division.

SEC. 6. Section 24210 of the Financial Code is amended to read:

24210. (a) Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for any of the following reasons:

(1) A false statement of a material fact has been made in the application.

(2) Any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has, within the last 10 years, (i) been convicted of or pleaded nolo contendere to a crime, or (ii) committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.

(3) The applicant or any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or

more of the outstanding interests or equity securities of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of a foreign jurisdiction.

(b) The application shall be considered withdrawn within the meaning of this section if the applicant fails to respond to a written notification of a deficiency in the application within 90 days of the date of the notification.

(c) The commissioner shall within 60 days from the filing of a full and complete application for a license with the fees, either issue a license or file a statement of issues prepared in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 7. Section 26010 of the Financial Code is amended to read:

26010. "Commercial finance lender" does not include employees regularly employed at the particular location specified in the license of the commercial finance lender except that an employee, when acting within the scope of his or her employment, shall be exempt from any other law from which his or her employer is exempt.

SEC. 8. Section 26206 of the Financial Code is amended to read:

26206. Upon the filing of an application pursuant to Section 26201 or 26201.1 and the payment of the fees, the commissioner shall investigate the applicant, and its general partners and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests if the applicant is a partnership, and its officers, directors, and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities if the applicant is a corporation, trust, or association (including an unincorporated organization). If the commissioner determines that the applicant has satisfied this division and does not find facts constituting reasons for denial as specified in Section 26210, the commissioner shall issue and deliver a license to the applicant to engage in business in accordance with this division.

SEC. 9. Section 26210 of the Financial Code is amended to read:

26210. (a) Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for any of the following reasons:

(1) A false statement of a material fact has been made in the application.

(2) Any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has, within the last 10 years, (i) been convicted of or pleaded nolo contendere to a crime, or (ii) committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.

(3) The applicant or any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant

has violated any provision of this division or the rules thereunder or any similar regulatory scheme of a foreign jurisdiction.

(b) The application shall be considered withdrawn within the meaning of this section if the applicant fails to respond to a written notification of a deficiency in the application within 90 days of the date of the notification.

(c) The commissioner shall within 60 days from the filing of a full and complete application for a license with the fees, either issue a license or file a statement of issues prepared in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

CHAPTER 901

An act to amend Sections 1770, 1770.5, 1771, 1773.5, 1773.7, 1773.8, 1773.9, 1774, 1775.5, 1779, 1780.5, 1780.6, and 1784 of, to repeal Section 1773.6 of, and to add Article 4 (commencing with Section 1793) to Chapter 10 of Division 2 of, the Health and Safety Code, relating to health, and making an appropriation therefor.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987]

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

SECTION 1. Section 1770 of the Health and Safety Code is amended to read:

1770. (a) Any provider who promises to provide care for life or for more than one year in return for a transfer of consideration from, or on behalf of, a person 60 years of age or older shall first receive written licenses pursuant to Chapter 2 (commencing with Section 1250) or Chapter 3.3 (commencing with Section 1569), and shall also obtain a certificate of authority from the State Department of Social Services.

(b) Notwithstanding subdivision (a), any arrangement for the care of a person by a relative, or any arrangement for the care of a person or persons from only one family by a friend, shall not require a certificate of authority.

(c) Any transaction, or series of transactions, in which care is promised to an elderly person in return for an entrance fee, prepayment, or other transfer of consideration which covers more than one year of services to, or residence for, that person shall be regarded as a life care contract under this chapter.

(d) Any arrangement for which a permit to sell deposit subscriptions or a certificate of authority has been obtained shall not be deemed a security for any purpose.

(e) If a provider subcontracts or assigns to another person or entity the responsibility to provide life care, that other person or

entity shall have a certificate of authority, except that the provider may contract for the provision of a particular aspect of life care, such as medical care, with another person or entity that does not possess a certificate of authority if that other person or entity is appropriately licensed under laws of this state to provide that care, and that care is not paid for more than one year in advance.

SEC. 2. Section 1770.5 of the Health and Safety Code is amended to read:

1770.5. (a) The Legislature finds and declares that abrupt and involuntary transfer of frail, elderly residents from one home to another can and does have tragic consequences. Numerous studies have shown that such forced movement often results in the death of the transferee and almost always causes depression or regressive behavior. Called "transfer trauma," the cause of this reaction has been variously ascribed to the loss of a familiar physical environment, loss of well-known neighbors, attendants, nurses and medical personnel, the stress of an abrupt break in the small routines of daily life, and the major loss of visits from friends and relatives who may be unable to reach the new facility. Involuntary transfer may occur when a provider of services under a life care contract has been found to be insolvent or substantially out of compliance with state operating standards.

(b) It is the intent of the Legislature in enacting this chapter to provide a procedure whereby the State Department of Social Services, after consultation with the Committee on Life Care Contracts of the State Social Services Advisory Board, may petition the superior court for an order appointing a qualified administrator to work with the management of, and, in specified circumstances, to operate a facility of, a provider which has been found to be out of compliance with the rules and regulations for the performance of life care contracts and thereby prevent crisis situations wherein elderly residents are left without means for their support or moved without proper preparation.

(c) It is the intent of the Legislature that the administrator may only assume the operation of such a provider in order to either bring it into compliance with law and return it to the original certificate holder in accordance with standards set forth in this chapter, or facilitate an orderly liquidation of the provider. It is the intent of the Legislature that the administrator shall assure the orderly transfer of residents should the provider ultimately fail.

(d) The Legislature further finds and declares that safeguards are necessary to protect elderly persons from selling or mortgaging their homes or transferring substantial amounts of cash or other consideration, in anticipation of the construction, licensure and operation of facilities promising to offer life care, when there is a material reason to believe that the facilities in development will not achieve the requisite enrollment, financing, licensure or other attributes necessary to commence and sustain operations on a sound financial basis. Methods and procedures to implement these

safeguards shall be established by the department. These safeguards shall include, but shall not be limited to, the following:

(1) Reasonable assurance that accommodations and services promised to elderly persons who have entered into life care contracts will be provided.

(2) Reserves, as provided in Sections 1775 and 1775.5, in order to preserve and provide collateral for consideration received from elderly persons who have entered into life care contracts or deposit subscription agreements so that contracted services may be provided and refunds paid as specified by this chapter and by contract provisions.

(3) Disclosure of basic information about providers, including current financial condition, affiliation with other persons or entities, and status of compliance with requirements of this chapter.

(4) Requirement that life care contracts include basic protective provisions as set forth in regulations promulgated by the department.

(5) Encouragement of self-regulation by providers, and consultation with the advisory board about proposed regulations.

SEC. 3. Section 1771 of the Health and Safety Code is amended to read:

1771. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter.

(a) "Advisory board" or "board" means the Committee on Life Care Contracts of the State Social Services Advisory Board.

(b) "Applicant for life care" means any person, prospective resident or transferor who transfers money or other consideration to a provider prior to the execution of a life care contract, based on the provider's representation that the transfer will reserve a living unit in, or assure care from, a facility, or as a prerequisite to the execution of a life care contract.

(c) "Care" means nursing services, medical services, health services, health related services, or assistance with the personal activities of daily living, or any combination of those services.

(d) "Certificate" or "certificate of authority" means an authorization in writing, in the form designated by the state department, for a provider to enter into one or more life care contracts at a single specified facility.

(e) "Contracts" or "agreements" means life care contracts.

(f) "Department" or "state department" means the State Department of Social Services.

(g) "Deposit subscription" means the installment payment of the entrance fee made by an applicant for life care to a provider during development or construction of a facility, pursuant to an approved permit to sell deposit subscriptions.

(h) "Director" means the Director of Social Services.

(i) "Elderly person" means a person 60 years of age or older.

(j) "Entrance fee" means an initial or deferred transfer to a provider of a sum of money or property, made or promised to be

made by a person entering into a life care contract, for the purpose of assuring care or related services pursuant to a life care contract or as full or partial payment for the promise to provide a facility.

(k) "Escrow agent" means any of the following entities approved by the director as capable of ensuring the safety of the funds and properties entrusted to it and capable and willing to perform the terms of such escrow pursuant to the escrow agreement and the provisions of this chapter:

(1) A bank which is a member of the Federal Deposit Insurance Corporation.

(2) A building and loan association which is a member of the Federal Savings and Loan Insurance Corporation.

(*l*) "Facility" means any place or accommodation in which a provider undertakes to provide a resident with care or related services pursuant to a life care contract, whether or not the place or accommodation is constructed, owned, leased, rented or otherwise contracted for by the provider. For the purposes of meeting the enrollment criteria of this chapter, a distinct phase of development may be considered to be the facility when a project is being developed in successive multiple phases over a period of time.

(m) "Life care contract" means a contract which includes a promise by a provider to provide care to a resident for the duration of his or her life or for a term in excess of one year, which is conditioned upon the transfer of consideration. The transfer may include a payment of an entrance fee to the provider or the payment of periodic charges for the care and services involved, or both types of payments. Life care contracts include continuing care agreements.

(n) "Living unit" means an apartment, room, or other area within a facility set aside for the exclusive use of one or more identified residents.

(o) "Monthly care fee" means the monthly charge to a resident for services rendered pursuant to a life care contract, exclusive of entrance fees or other prepayments, including care, board, or lodging, and any other periodic charges to the resident, determined on a monthly or other recurring basis, pursuant to the provisions of a life care contract.

(p) "Nonmedical unit" means a living unit of a facility which is neither subject to licensure as a health facility nor designated for ongoing personal care, as defined in Section 1569.2.

(q) "Permit to sell deposit subscriptions" means an authorization in writing, in the form designated by the state department, for a provider to enter into one or more deposit subscription agreements at a single specified facility.

(r) "Prepaid life care contract" means a life care contract under which the advance payment, including any entrance fee, is more than nine times the annual amount of the monthly care fee or 108 times the monthly care fee. Life care contracts which provide for changes in the monthly care fee to cover the actual cost of care are

excluded from this definition.

(s) "Processing fee" means an advance payment by the transferor to cover administrative costs of processing the application of a prospective resident.

(t) "Promise to provide care" means any representation that care will be provided or will be available, whether the representation is part of a life care contract or other written agreement, or is made orally, or is contained in any advertisement, brochure or other printed material.

(u) "Proposes" means a representation that a provider plans to make a future promise to provide care, which may be subject to the happening of certain events, such as facility construction or obtaining a certificate of authority.

(v) "Provider" means a person, association, joint venture or organization of any kind, including a homeowner's association, cooperative, or a condominium association, whether in single or multiple entities, which promises to provide, or proposes to promise to provide care for life or for more than one year.

(w) "Resident" means an elderly person who enters into a life care contract with a provider, or who is designated in a life care contract, to be a person being provided or to be provided with services, including care, board, or lodging.

(x) "Transferor" means a person who transfers or promises to transfer a sum of money or property to a provider for the purpose of assuring care or related services pursuant to a life care contract, whether for the benefit of the transferor or another.

SEC. 4. Section 1773.5 of the Health and Safety Code is amended to read:

1773.5. (a) No deposit subscription shall be received from an applicant for life care by a provider who proposes to promise to provide care, unless the provider has first received a permit to sell deposit subscriptions from the department. Until the department has authorized the release of funds from escrow, in accordance with Section 1773.9, all deposit subscriptions, excluding reasonable processing fees to cover costs, shall be placed in an escrow account, the terms of which must be approved in advance by the department.

(b) No life care contract shall be executed, unless the provider has first received a certificate of authority or a provisional certificate of authority from the department. Until the department has authorized the release of funds from escrow, in accordance with Section 1773.9, all entrance fees, excluding reasonable processing fees to cover costs, shall be placed in an escrow account, the terms of which shall be approved in advance by the department.

(c) No moneys or other consideration placed in escrow shall be encumbered or used as collateral for any obligation of the provider or any other person, unless the encumbrance or use as collateral is subordinate to the rights of transferors for refunds under this chapter or pursuant to their deposit subscription agreement or life care contract.

SEC. 5. Section 1773.6 of the Health and Safety Code is repealed.

SEC. 6. Section 1773.7 of the Health and Safety Code is amended to read:

1773.7. (a) If deposit subscriptions placed in escrow pursuant to Section 1773.5 can be used, in whole or in part, to finance facility construction, construction of the facility may not commence until at least 20 percent of each applicable entrance fee has been received for at least 60 percent of the number of nonmedical units projected, in documents submitted to, and approved by, the department, to be occupied six months after the facility has opened for operation.

(b) If deposit subscriptions are placed in escrow pursuant to Section 1773.5 prior to completion of construction of the facility, and are not to be used, in whole or in part, to finance facility construction, construction of the facility may not commence until at least 10 percent of each applicable entrance fee has been received for every nonmedical unit projected, in documents submitted to, and approved by, the department, to be occupied six months after the facility has opened, or the percentage of entrance fees specified in subdivision (a) has been received.

(c) If existing buildings are to be converted to a life care use, no deposit or payment for life care contracts shall be received by a provider unless the provider has agreed to keep deposit subscriptions or entrance fees in escrow until the provisions of Section 1773.9 have been met.

SEC. 7. Section 1773.8 of the Health and Safety Code is amended to read:

1773.8. (a) Before obtaining a permit to sell deposit subscriptions or a certificate of authority, each provider shall submit to the department a financial and marketing plan, including occupancy projections, covering the project development period and a period of at least five years after the opening of the facility for occupancy. If at any time prior to issuance of a certificate of authority, the provider's average performance over any six-month period does not substantially equal or exceed the provider's projections for that period, the department, in consultation with the advisory board, may cancel the permit to sell deposit subscriptions, may increase the percentages of completion of construction or the numbers or percentages of deposits on entrance fees required under Sections 1773.7, 1773.9, 1780.5, and 1780.6, or may increase the reserve requirements under this chapter for that provider. In the event consideration has been released from escrow, the department may further require the provider to reopen the escrow as a condition of receiving any further payments from applicants for life care.

(b) In addition to the requirements of subdivision (a), a provider, before obtaining a permit to sell deposit subscriptions, shall also submit documentation evidencing a preliminary approval for licensure from the State Department of Social Services, Community Care Licensing Division or the State Department of Health Services, Licensing and Certification Division, as appropriate, in order to

demonstrate ability and intent to comply with subdivision (a) of Section 1770.

SEC. 8. Section 1773.9 of the Health and Safety Code is amended to read:

1773.9. (a) Except as provided in subdivision (b), the escrow agent shall pay refunds to applicants for life care who terminate an arrangement for life care, upon written notice from the provider in accordance with the approved deposit subscription agreement or life care contract, as applicable. These refunds shall be paid within 10 days after the applicant for life care gives notice to the provider.

(b) After notice of commencement of construction, an applicant for life care shall not be entitled to a refund of deposit subscriptions until the facility is opened for operation, or another applicant for life care has reserved the residential unit and paid the necessary entrance fee deposit or deposits, with respect to the unit for which the refund is sought by the previous applicant for life care.

(c) The department shall instruct the escrow agent to release to the provider all deposit subscriptions or entrance fees which have been placed in escrow pursuant to Section 1773.5, when all of the following requirements have been met:

(1) Either:

(A) Construction of the facility is at least 50 percent completed and at least 20 percent of the total of each applicable entrance fee has been received and placed in escrow for at least 50 percent of the total number of nonmedical units in the project, or;

(B) Construction of the facilities is completed and at least 10 percent of the total of each applicable entrance fee has been received and placed in escrow for at least 75 percent of the total number of nonmedical units in the project.

(2) Provider's average performance over any six-month period substantially equals or exceeds its financial and marketing projections, approved by the department, for that period.

(3) Licensing requirements are being met on a timely basis.

(4) Any additional requirements for release of escrowed funds, established by the department pursuant to subdivision (a) of Section 1773.8, have been met.

(d) If the requirements of subdivision (c) are not met within 36 months after the opening of the escrow required by Section 1773.5, the department may instruct the escrow agent to refund to applicants for life care or transferors all deposit subscriptions or entrance fees held in escrow plus any interest earned in accordance with the approved deposit subscription agreements or life care contracts, as applicable. The department, in its discretion, may lengthen the 36-month period upon a showing of good cause.

SEC. 9. Section 1774 of the Health and Safety Code is amended to read:

1774. Before issuing a permit to sell deposit subscriptions or a certificate of authority, the state department shall require that any agent or employee of the applicant, who, in the course of his or her

agency or employment, has access to any substantial amount of funds, furnish and maintain in effect during the period that the certificate of authority is in force, a surety bond in the form and penal sum as the state department finds necessary to protect all persons from loss of the funds.

SEC. 10. Section 1775.5 of the Health and Safety Code is amended to read:

1775.5. (a) The Legislature foresees the need to protect transferors who have entered into life care contracts which provide for substantial refunds of entrance fee payments. Without reasonable assurance of the providers' abilities to pay the refunds, in consideration of possible competitive disadvantages, such as aging of the facility, the transferors or their estates would risk the loss of substantial entrance fee refunds. It is the policy of the State of California to limit these risks for the benefit of the general population of elderly persons. Therefore, the department shall impose requirements with respect to entrance fee refunds.

(b) Each provider, or other entity assuming responsibility, shall provide satisfactory evidence of the ability to pay refunds of entrance fees if the proposed or current life care contract form includes promises, express or implied, to pay refunds of entrance fees or to repurchase the transferors' units, membership, stock, or other interest in the project or facility, after the end of the trial residence period, in the event of the death of the surviving resident, or in the event of voluntary termination by the transferor or residents, when the specified refund right is not fully amortized within the first six years of residency.

(c) Satisfactory evidence of the ability to pay refunds shall be the maintenance of a refund reserve, deposited in a special trust fund which shall remain intact to accumulate interest earnings resulting from investments of liquid reserves in accordance with Section 1775.

(1) The "refund reserve" referred to in this subdivision shall be calculated based on the following assumptions:

(A) The facility will no longer receive entry fee income after a period of 40 years starting with the commencement of operation.

(B) Approved long-term investments, such as treasury notes, will earn 3 percent more than the rate of inflation.

(C) Entrance fees will increase at the rate of inflation.

(D) Land values will increase at the rate of inflation.

(E) Investments in the refund reserve trust will increase at the rate for approved long-term investments.

(2) The refund reserve referred to in this subdivision shall be calculated as follows:

(A) Calculate the number of units to be turned over each year at the approved rate of turnover.

(B) Determine the mean entrance fee, as of the current date.

(C) Determine the factor for inflating the mean entrance fee at the rate of 3 percent below the rate of interest on new 30-year treasury bonds, for the time interval from the current date to the

40th year of operation and for each preceding year, until all units have been turned over.

(D) Calculate the inflated mean entrance fees for the 40th year and for each preceding year, until all units have been turned over.

(E) (i) Multiply the inflated mean entrance fee for the 40th year, as specified in subparagraph (D), by the annual turnover, as specified in subparagraph (A).

(ii) Multiply the inflated mean entrance fee for each preceding year by the annual turnover, until the total of the annual turnovers used in the calculations equals the total number of units in the facility.

(iii) The projected refund liability shall be the sum of the products obtained pursuant to clauses (i) and (ii), multiplied by the rate of refund for the seventh year of residency, specified by current contracts, multiplied by the percentage of current life care contracts which specify this rate of refund. The projected refund liability shall be calculated for each rate, if existing contracts specify several rates.

(F) The projected refund liability, or the aggregate of these liabilities, if several rates are obtained pursuant to clause (iii) of subparagraph (E), may be reduced by the value of the land used for the facility, as determined by an appraiser approved by the department, inflated to the 40th year of operation, as determined pursuant to subparagraph (C), if the provider agrees to a lien pursuant to Section 1772 to secure this commitment.

(G) Calculate the present value of the projected refund liability at the rate of interest for new 30-year treasury bonds. The result is the required refund reserve.

(3) The amount of the refund reserve shall be revised annually by the provider and submitted to the department in conjunction with the annual audit and reports required by Section 1782.5.

(d) Any provider who has a certificate of authority or permit to sell deposit subscriptions issued by the department pursuant to this chapter on or before September 23, 1986, shall be exempt from the refund reserve requirement established by this section if the provider or other entity assuming responsibility has an equity balance of five times the amount of the refund reserve calculated pursuant to subdivision (c), as verified by one or more of the following means: the "stockholders' equity," or equivalent amount, as reflected on the most recent Form 10K (which may be on a consolidated basis or on a consolidated and combined basis) filed with the Securities and Exchange Commission; the "total fund balances or net worth," or equivalent amount, as reflected on the most recent Form 990 or Form 990-PF filed with the Internal Revenue Service; or the "total net worth," or equivalent amount, as reflected on the most recent Form 109 filed with the Franchise Tax Board.

(1) The amount of the requirement for the equity balance shall be revised annually pursuant to subdivision (c).

(2) Compliance shall be based on review, by the department, of

financial statements prepared in accordance with generally accepted accounting principles, accompanied by an unqualified opinion by a licensed certified public accountant.

(3) If the equity balance is determined by the department to be less than the required amount, the provider or other entity assuming responsibility shall post, in a form satisfactory to the department, an amount equal to the refund reserve required within 60 days.

(e) Except with respect to subdivisions (a) and (h), this section shall remain operative only until December 31, 1988, or the effective date of the regulations promulgated pursuant to subdivision (f), whichever is earlier, and shall be inoperative as of that date.

(f) Prior to December 31, 1988, the department shall promulgate regulations, adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to establish these or other appropriate reserve requirements or exemptions therefrom pertaining to refundable entrance fees where the specified refund right is not amortized over the first six years of residence in the event of voluntary termination. The department shall conduct the regulation adoption process expeditiously to ensure that the regulations will become effective no later than January 1, 1989.

(g) In promulgating the regulations, the department shall consult throughout the regulation adoption process with the following:

(1) The California Association of Homes for the Aging.

(2) The Committee on Life Care Contracts of the Social Services Advisory Board.

(3) Representatives of life care providers, or potential life care providers, who are not members of the California Association of Homes for the Aging but who have a certificate of authority or a permit to sell deposit subscriptions issued by the department pursuant to this chapter.

(4) Any other persons, entities, and organizations the department deems proper to ensure that the refund reserve requirements so promulgated are both effective from the standpoint of consumer protection and feasible from the standpoint of life care providers.

(h) Any life care provider who (1) has a certificate of authority or a permit to sell deposit subscriptions issued by the department pursuant to this chapter on or before the date the Governor signs the bill enacting this section or, if the bill becomes a statute without the Governor's signature, September 30, 1986, whichever date is earlier, and (2) qualifies for the exemption set forth in subdivision (d) of this section shall not be required to provide any further refund reserve or security pursuant to this section or the regulations promulgated hereunder.

SEC. 11. Section 1779 of the Health and Safety Code is amended to read:

1779. Any agreement constituting a life care contract shall contain all of the following in addition to any other terms or matter required by the state department:

(a) The value of all property transferred, including, but not limited to, donations, subscriptions, fees, and any other amounts paid or payable by or on behalf of the resident. The basis for changing monthly care fees shall be printed in a size equal to at least 10-point boldface type.

(b) The services which are to be provided by the provider to the resident, including, in detail, all items which the resident will receive, such as board, room, medical care, clothing, burial, incidentals, and whether such items will be provided for a designated time period or for life.

(c) A copy of the current financial statement.

(d) A statement in boldface type informing the transferor of the terms and conditions under which the contract may be terminated by either party, including any health or financial conditions for a person to continue as a resident and any conditions under which all or any portion of the entrance fee will not be refunded by the provider. No life care contract shall be terminated except upon at least 90 days' notice, except that, during the first 90-day trial residence period, the agreement may be terminated by either party without cause and without advance notice. Such requirement shall be written into the terms of the contract, consistent with state law.

(e) A conspicuous statement in a size equal to at least 10-point boldface type in immediate proximity to the space reserved for the signature of the transferor that provides as follows:

"You, the transferor, may cancel this transaction at any time within 90 days from the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(f) A completed form in duplicate, captioned "Notice of Cancellation" which may be attached to the agreement and be easily detachable, and which shall contain in type of at least 10-point size the following statement:

"Notice of Cancellation"

/Enter date of transaction/

(Date)

You may cancel this transaction, without any penalty, within 90 days from the above date.

If you cancel, any property transferred, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days after making possession of the living unit available to the provider, and any security interest arising out of the transaction will be canceled.

If you cancel, you are obligated for a reasonable processing fee to cover costs and the reasonable value of the services received by you from the provider after the first seven days up to the date you canceled or made available to the provider the possession of any

living unit delivered to you under this contract, whichever is later.

If you cancel, you must make available to the provider, in substantially as good condition as when received, the possession of any living unit delivered to you under this contract.

Possession of the living unit must be made available to the provider within 20 days of your notice of cancellation. If you fail to make the possession of any living unit available to the provider, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____ ,
/Name of provider/

at _____
/Address of provider's place of business/

not later than midnight of _____.
(Date)

I hereby cancel this transaction _____ .
(Date)

_____
(Transferor's signature)

(g) The name and address of the provider to which a notice of cancellation is to be delivered.

(h) The date the transferor signed the agreement.

(i) With respect to the transfer of real property pursuant to this chapter, a statement that the deed or other instrument of conveyance shall contain a recital that the transaction is made pursuant to a "life care contract" and may be subject to rescission by the transferor within 90 days from the date of the transfer.

The failure to comply with this subdivision shall not affect the validity of title to real property transferred pursuant to this chapter.

SEC. 12. Section 1780.5 of the Health and Safety Code is amended to read:

1780.5. A certificate of authority shall not be issued to a provider unless the department determines that all of the following have occurred:

(a) Construction of the facility or applicable phase is completed and required licenses have been obtained.

(b) At least one of the following requirements has been met:

(1) At least 80 percent of the total nonmedical units in the facility have been reserved, with payment in full of the entrance fee.

(2) At least 70 percent of the total nonmedical units in the facility have been reserved, with payment in full of the entrance fee, and the provider has submitted a financial and marketing plan, satisfactory to the department, demonstrating that the project will be financially viable.

(3) At least 50 percent of the total nonmedical units in the facility have been reserved, with payment in full of the entrance fee, and the

provider furnishes a letter of credit or other security, satisfactory to the department, sufficient to bring the total amount of payments to a level equivalent to 80 percent of the total entrance fees for the entire facility.

(c) A minimum 5-year financial plan of operation satisfactory to the department has been submitted.

(d) Adequate reserves exist as required by Sections 1775 and 1775.5. For a new facility without an operating history, the department may approve calculation of required reserves on a pro forma basis in conjunction with compliance with approved marketing plans.

(e) All applicable provisions of this chapter have been met.

SEC. 13. Section 1780.6 of the Health and Safety Code is amended to read:

1780.6. In order to permit a provider to enter into life care contracts and meet the requirements of subdivision (b) of Section 1780.5, the department shall issue a provisional certificate of authority when a provider has done all the following:

(a) Met the preconstruction requirements of either subdivision (a) or (b) of Section 1773.7 or the requirements of subdivision (c) of Section 1773.7.

(b) Completed construction of the facility, and obtained the required licenses referenced in subdivision (a) of Section 1770.

(c) Complied with the approved marketing plans in accordance with Section 1773.8.

(d) Complied with subdivision (c) of Section 1780.5.

The provisional certificate of authority shall be valid for a period of 12 months after issuance. Upon a showing of good cause by the provider, the department may extend a provisional certificate of authority for one additional 12-month period if it appears to the department that the provider is capable of meeting the requirements of Section 1780.5 during the period of extension.

SEC. 14. Section 1784 of the Health and Safety Code is amended to read:

1784. (a) Certificates of authority may be suspended, limited, or revoked for cause by the state department as follows:

(1) Revocation of the license of the provider pursuant to the licensing provisions of Chapter 2 (commencing with Section 1250) or Chapter 3 (commencing with Section 1500) shall require either that the department revoke or suspend such certificate or that the director petition the superior court in the county in which the provider's facility is located for an order appointing an administrator to assume management and possession of the facility and the assets thereof pursuant to Article 2 (commencing with Section 1790).

(2) Suspension of the license of the provider pursuant to the licensing provisions of Chapter 2 (commencing with Section 1250) or Chapter 3 (commencing with Section 1500) is cause for the department, in its discretion, to limit, suspend, or revoke such certificate until such license is reinstated.

(3) Failure to maintain at all times at least the minimum reserve requirements of Section 1775 without notice to, and written approval of, the department, a copy of which written approval shall be posted in at least two prominent locations in the facility, is cause to limit or suspend such certificate. The department may, upon finding of changed circumstances, remove a suspension or limitation imposed pursuant to this paragraph after approval by the department of a temporary deficiency in such reserves, and after notice of such approval is posted in at least two prominent locations in such facility, and after the department finds that the residents of such facility are adequately protected.

(4) Failure to file the annual financial audit and reports pursuant to Section 1782.5 is cause for the department to limit, suspend, or revoke the certificate.

(5) Maintaining the reserve fund escrow account required pursuant to Section 1774.4 at an amount less than the aggregate principal and interest, rental, and lease payments due during the next 12 months pursuant to Section 1774.4 for one or more periods totaling 12 months or more in the aggregate in the preceding two-year period is cause to limit, suspend, or revoke such certificate.

(6) Violation of a limitation on a certificate shall require the department to revoke such certificate.

(7) Violation of the rules and regulations promulgated by the department pursuant to the provisions of this chapter is cause for the department to limit, suspend, or revoke such certificate.

(8) Failure to comply with the refund reserve requirement specified in Section 1775.5 shall be cause for the department to revoke the certificate.

(b) Once issued, a certificate of authority shall be limited, suspended, or revoked by the state department only after consultation with, and consideration of the recommendations by, the advisory board. The person or organization whose certificate of authority is limited, suspended, or revoked shall have right of appeal to the state department. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the state department shall have all of the powers granted therein. A suspension, limitation, or revocation shall remain in effect until completion of such proceedings in favor of the provider, and may be changed to another form of such qualification on the certificate.

(c) For the purposes of this chapter "limit" and "limitation," with respect to a certificate, means a restriction on any activity pursuant to such certificate which prohibits the provider from entering any new contract or contracts subject to this chapter.

SEC. 15. Article 4 (commencing with Section 1793) is added to Chapter 10 of Division 2 of the Health and Safety Code, to read:

Article 4. Life Care Provider Fee Fund

1793. (a) There is hereby created in the State Treasury a fund which shall be known as the Life Care Provider Fee Fund. The fund shall consist of funds received by the department pursuant to Section 1791. Notwithstanding Section 13340 of the Government Code the Life Care Provider Fee Fund is hereby continuously appropriated without regard to fiscal years to the department for the purpose of funding all of the following:

(1) Statistical and actuarial studies for use by providers and departmental program management.

(2) Contracts with technically qualified persons, as necessary to provide advice regarding the feasibility of proposed facilities.

(3) Development of improved departmental systems and procedures for carrying out the responsibilities imposed by this chapter, in consultation with the advisory board.

(b) The department shall use no more than 5 percent of the funds appropriated pursuant to this section for administrative costs.

CHAPTER 902

An act to amend Section 42923 of the Education Code, relating to foster children services.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 42923 of the Education Code is amended to read:

42923. (a) Each school district providing foster children services pursuant to this chapter shall, by January 1 of each even-numbered year, report to the Superintendent of Public Instruction any information as may be required by the Superintendent of Public Instruction for the purpose of subdivision (b).

(b) The Superintendent of Public Instruction shall, by February 15 of each even-numbered year, report to the Legislature and the Governor on the foster children services provided by school districts. The report shall be prepared with the advice and assistance of providers of foster children services and shall include, but not be limited, to the following:

(1) Recommendations regarding the continuation of services.

(2) Recommendations regarding the effectiveness of the services, unless program effectiveness is assessed in any other report covering the same time period.

(3) Recommendations regarding the broadening of the application of those services.

(4) Information which shall be sufficient to determine at a minimum, whether these services have resulted in a major quantitative improvement or deterioration in any of the following indicators:

(A) Pupil academic achievement.

(B) The incidence of pupil discipline problems or juvenile delinquency.

(C) Pupil dropout rates or truancy rates.

(5) A discussion of the meaning and implications of the indicators contained in paragraph (4).

CHAPTER 903

An act to amend Section 16072 of the Vehicle Code, relating to driver's licenses.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 16072 of the Vehicle Code is amended to read:

16072. (a) The suspension of the driving privilege of a person as provided in Section 16070 shall not be terminated until one year has elapsed from the date of actual commencement of the suspension and until the person files proof of financial responsibility, provided that the suspension shall be reinstated if the person fails to maintain proof of financial responsibility for three years. However, in lieu of suspending a person's driving privilege pursuant to this section, the department may, upon application, restrict the person's driving privilege to necessary travel to and from that person's place of employment and to driving that is required in the person's course of employment, when driving a motor vehicle is necessary in order to perform the duties of the person's primary employment, if the person files and thereafter maintains proof of financial responsibility pursuant to Section 16021 and pays a penalty fee to the department of two hundred fifty dollars ($250). The restriction shall remain in effect for the period of suspension required by this section. If proof of financial responsibility is established by the filing of evidence that the person procured an automobile or motor vehicle liability policy or bond, and coverage under that policy or bond terminates, the insurer or surety shall inform the department of the date of termination.

(b) If a suspension has been imposed under Section 16070 and one year has elapsed from the date of suspension actually commenced, that suspension shall be terminated if the driving privilege is suspended under Section 16370 or 16381 as the result of a judgment

arising out of the accident for which proof of financial responsibility was required to be established. The department may reimpose the suspension of the driving privilege of a person under Section 16070 if the suspension under Section 16370 or 16381 is later set aside for a reason other than that the person has satisfied the judgment in full or to the extent provided in Chapter 2 (commencing with Section 16250) and has given proof of ability to respond in damages as provided in Chapter 3 (commencing with Section 16430).

(c) Notwithstanding Chapter 2 (commencing with Section 42200) of Division 18, all revenues derived from the penalty fees provided in subdivision (a) shall be deposited in the Financial Responsibility Penalty Account in the General Fund. The balance in this fund on July 1, 1986, and each successive July 1 thereafter, which is not subject to appropriation as provided in Section 12980 of the Insurance Code, shall revert to the General Fund.

CHAPTER 904

An act to amend Sections 51005, 51361, 51368, 51400, 51401, 51402, and 51403 of, to amend and renumber Section 50154 of, and to repeal Sections 51326, 51368, and 51404 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 19, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 50154 of the Health and Safety Code, as added by Chapter 323 of the Statutes of 1983, is amended and renumbered to read:

50156. The California Housing Finance Agency shall provide to the Legislature and the Legislative Analyst, in each annual report required by Section 51005, information concerning all units produced, assisted, or insured using agency funds. This information shall include, but shall not be limited to, the sales prices of these units, the number of units within various price ranges or price classifications, the rents being charged for the units, the number of rental units within each price range, the number of households by income level purchasing the units, and the number by household income occupying the rental units.

SEC. 2. Section 51005 of the Health and Safety Code is amended to read:

51005. (a) The agency shall, by November 1 of each year, submit an annual report of its activities under this division for the preceding year to the Governor, the Secretary of the Business and Transportation Agency, the Director of Housing and Community

Development, the Treasurer, the Joint Legislative Budget Committee, and the Legislature. The report shall set forth a complete operating and financial statement of the agency during the concluded fiscal year. The report shall specify the number of units assisted, the distribution of units among the metropolitan, nonmetropolitan, and rural areas of the state, and shall contain a summary of statistical data relative to the incomes of households occupying assisted units, the monthly rentals charged to occupants of rental housing developments, and the sales prices of housing developments purchased during the previous fiscal year by housing sponsors who are persons or families of low or moderate income. The report shall also include a statement of accomplishment during the previous year with respect to the agency's progress, priorities, and affirmative action efforts. The agency shall specifically include in its report on affirmative action goals, statistical data on the numbers and percentages of minority sponsors, developers, contractors, subcontractors, suppliers, architects, engineers, attorneys, mortgage bankers or other lenders, insurance agents, and managing agents.

(b) The report shall also include specific information evaluating the extent to which the programs administered by the agency have attained the statutory objectives of the agency, including, but not limited to, (1) the primary purpose of the agency in meeting the housing needs of persons and families of low or moderate income pursuant to Section 50950, (2) the occupancy requirements for very low income households established pursuant to Sections 50951 and 51226, (3) the elderly and orthopedic disability occupancy requirements established pursuant to Section 51230, (4) the use of surplus moneys pursuant to Section 51007, (5) the metropolitan, nonmetropolitan, and rural goals established pursuant to subdivision (h) of Section 50952, (6) the California Statewide Housing Plan, as required by Section 50154, (7) the statistical and other information developed and maintained pursuant to Section 51650, (8) the implementation and administration of the Senior Citizens Housing Assistance Program established pursuant to Chapter 9 (commencing with Section 51450), including (A) the number of assisted units in rental housing developments, (B) the number of units in rental housing developments occupied by, or available to, eligible households, (C) the number of units in rental housing developments occupied by, or available to, very low income eligible households, (D) the average income of, and the distribution of annual incomes among, eligible households, (E) the average and median cost of a unit in each rental housing development, (F) the administrative costs incurred by the agency to implement and manage each program, (G) the agency's recommendations, as needed, to improve the operation of each program, (9) the number of manufactured housing units assisted by the agency, (10) information with respect to the proceeds derived from the issuance of bonds or securities and any interest or other increment derived from the investment of bonds or securities, and the uses for which those proceeds or

increments are being made as provided for in Section 51365, including the amount by which each fund balance exceeds indenture requirements, (11) any recommendations described in subdivision (d), (12) any recommendations described in Section 51227, and (13) the revenue bonding authority plan adopted pursuant to Section 51004.5.

The Legislative Analyst shall include an analysis of the information in the report on the Senior Citizens Housing Assistance Program in the Legislative Analyst's analysis of the 1989 and 1990 Budget Bills and evaluate the extent to which the objectives of Chapter 9 (commencing with Section 51450) are being accomplished along with any recommendations for improving program performance and meeting statutory objectives.

(c) The agency shall cause an audit of its books and accounts with respect to its activities under this division to be made at least once during each fiscal year by an independent certified public accountant and the agency shall be subject to audit by the Department of Finance not more often than once each fiscal year.

(d) The agency shall assess any obstacles or problems which it has encountered in meeting its mandate to serve nonmetropolitan and rural metropolitan areas, and recommend legislative and administrative solutions to overcome these obstacles or problems. The agency shall separately assess its progress in meeting the rehabilitation needs of rural areas and the new construction needs of rural areas, and separately assess its progress as to single and multifamily units. The agency shall include in its report a quantification and evaluation of its progress in meeting the housing needs of communities of various sizes in rural areas.

(e) By December 1 of each fiscal year, the agency shall ascertain that not less than 25 percent of the total units financed by mortgage loans during the preceding 12 months pursuant to this part were made available to very low income households. If the agency finds that these very low income occupancy goals have not been met, the agency shall immediately notify the Governor, the Speaker of the Assembly, and the Senate Rules Committee, and shall recommend legislation or other action as may be required to make (1) at least 25 percent of the units so available, and (2) at least 25 percent of the units thereafter financed so available. In housing developments for which the agency provides a construction loan but not a mortgage loan, the agency shall report annually on the percentage of units projected to be made available for occupancy and actually occupied by lower income households.

SEC. 3. Section 51326 of the Health and Safety Code is repealed.

SEC. 3.5. Section 51361 of the Health and Safety Code is amended to read:

51361. The Treasurer shall act as trustee for the agency and the holders of its bonds, provided the Treasurer elects to serve as trustee with respect to a particular issuance of bonds by notifying the agency of this election in writing at or prior to the board meeting at which

the board approves a resolution authorizing the issuance and sale of the bonds.

Any bonds issued under this division may be secured by a trust agreement, indenture, or resolultion, by and between the agency and a trustee or trustees, which may be the Treasurer or any trust company or bank having the powers of a trust company within or without the state. Notwithstanding other provisions in this division, references to the Treasurer as trustee shall be deemed to refer to either the Treasurer or the duly empowered bank or trust company trustee as the case may be. The trust agreement, indenture, or the resolution providing for the issuance of the bonds may pledge or assign revenues to be received or proceeds of any contract or contracts pledged. Any resolution authorizing any bonds or issue thereof shall prescribe the duties of the Treasurer with respect to the issuance, authentication, sale, and delivery of the bonds, the payment of principal and interest thereof, and the redemption of the bonds. Notwithstanding any other provision of law, the Treasurer shall not be deemed to have a conflict of interest by reason of acting as trustee pursuant to this division.

The agency may provide by a resolution for the deposit of all revenues pledged for the security of the bonds in one or more separate accounts in the California Housing Finance Fund under the control of the Treasurer as trustee. The money in the accounts shall be disbursed only as provided in the resolution.

The trustee shall act on behalf of the holders of the agency's bonds, or any stated percentage thereof, for the purpose of exercising and prosecuting on behalf of the holders in the manner and under conditions provided in the resolution authorizing the bonds.

SEC. 4. Section 51368 of the Health and Safety Code, as added by Section 2 of Chapter 997 of the Statutes of 1981, is repealed.

SEC. 5. Section 51368 of the Health and Safety Code, as added by Section 2.5 of Chapter 997 of the Statutes of 1981, is amended to read:

51368. (a) The Supplementary Bond Security Account is hereby created in the California Housing Finance Fund. Moneys in the account may be transferred into separate, individual accounts in the fund which shall be known as supplementary reserve accounts, but the amounts appropriated to the Supplementary Bond Security Account shall be utilized to secure issuances of bonds as deemed necessary by the agency and may also be used as provided in subdivision (d). Upon issuance of any bonds, the agency may create a supplementary reserve account to secure payment of the principal of, interest, redemption-premium, and sinking fund payments on those bonds.

(b) When all obligations secured by all supplementary reserve accounts are retired the Supplementary Bond Security Account shall be dissolved and all moneys therein shall be used first for repayment to the General Fund in the State Treasury of amounts advanced to the Supplementary Bond Security Account from the General Fund, less any amount previously repaid on account of the advances.

Remaining funds shall be paid into the general accounts of the housing finance agency unless otherwise obligated.

(c) When the amount in a bond reserve fund falls below the minimum bond reserve fund requirement for that fund and available revenues of the agency pledged to the prescribed minimum bond reserve fund requirement are insufficient to restore the fund, the agency shall transfer to the bond reserve fund, from the supplementary bond reserve account securing the bonds, the amount necessary to restore the fund to the minimum bond reserve fund requirement. Moneys in supplementary reserve accounts may be used to directly pay the interest, principal and sinking fund payments on the bonds as provided by bond resolution.

(d) Supplementary reserve accounts may also be used to insure mortgages to protect the value of the housing developments, residential structures, or other housing financed under this division that serves as real property security, in any manner permitted by the agency.

(e) "Bonds" as used in this section, includes taxable securities issued pursuant to Chapter 8 (commencing with Section 51400).

SEC. 6. Section 51400 of the Health and Safety Code is amended to read:

51400. The Legislature finds and declares that it is essential to the economic growth of the state and the supply of adequate residential and multifamily rental housing in the state and that it is a public purpose to expand the program of the agency of purchasing and selling residential mortgage loans for which all California families may be eligible and financing, purchasing, and selling loans for multifamily rental housing. The Legislature also finds and declares that it is a public purpose to create procedures through which the agency may issue mortgage-backed securities to finance these purchases for sale to pension funds, institutional investors, and individuals.

SEC. 7. Section 51401 of the Health and Safety Code is amended to read:

51401. Notwithstanding any other provision of this division, as used in this chapter:

(a) "Mortgage loan" means any residential mortgage loan or multifamily rental housing loan.

(b) "Multifamily rental housing" means any existing structure of more than four dwelling units or any work or undertaking of more than four units of new construction, improvement, or rehabilitation for the provision of housing.

(c) "Multifamily rental housing loan" means a mortgage loan secured by a mortgage on multifamily rental housing.

(d) "Residence" means any existing structure of one to four dwelling units or any work or undertaking of one to four dwelling units of new construction, improvement, or rehabilitation for the provision of housing.

(e) "Residential mortgage loan" means a mortgage loan secured

by a mortgage on a residence.

(f) "Taxable securities" means securities bearing interest that is otherwise taxable under the personal income tax provisions of state and federal tax law and which are issued to finance the purchase or making of mortgage loans pursuant to this chapter.

SEC. 8. Section 51402 of the Health and Safety Code is amended to read:

51402. (a) Notwithstanding any other provision of this division, the agency may establish a mortgage loan program. Under the mortgage loan program, the agency may acquire or make first or second mortgage loans for the construction, purchase, improvement, or rehabilitation of residences or multifamily rental housing.

(b) The agency may invest in, make, purchase, take assignments of, or otherwise acquire or make commitments to invest in, make, purchase, take assignments, or otherwise acquire any mortgage loan or partial interest or participation therein. The agency may sell, assign, or otherwise dispose of, or enter into commitments to sell, assign, or otherwise dispose of, any obligation, mortgage loan, or partial interest or participation therein, or create pools of obligations, mortgage loans, or partial interest or participations held by the agency, and issue and sell securities backed by pools. The agency may require the seller of obligations, residential mortgage loans, or partial interest or participations purchased by the agency, to use the proceeds of the sale for the purpose of financing mortgage loans, except when the proceeds arise from the sale of new loans, initiated for the purpose of sale to the agency or others. The agency may pledge mortgage loans, acquired pursuant to the mortgage loan program, to pay the principal, interest, and redemption premium, if any, on taxable securities issued by the agency for the mortgage loan program.

(c) Any multifamily rental housing financed by the agency pursuant to this chapter shall be subject to the same occupancy standards specified in Section 51335.

SEC. 9. Section 51403 of the Health and Safety Code is amended to read:

51403. (a) The agency may, from time to time, issue its taxable securities in whatever principal amount the agency determines is necessary to provide sufficient funds for the acquisition or making of mortgage loans and for the payment of interest on the securities, establishment of reserves to secure the securities, and other expenditures of the agency incident to, and necessary or convenient to, issuance of the securities, and the purchase or sale of mortgage loans in accordance with this chapter.

(b) Notwithstanding any other provision of this division, taxable securities issued pursuant to this chapter shall not be subject to any limitation of aggregate principal amount outstanding at any time. The securities shall not be taken into account for purposes of the limitation on indebtedness of the agency contained in Section 51350, or any other limitation on the amount of securities of the agency

which at any time may be issued or which may be outstanding.

(c) Any taxable securities issued pursuant to this chapter shall not be a general obligation of the agency and shall be payable solely from the receipts, revenues, or other income derived in respect of mortgage loans or securities purchased or sold pursuant to this chapter. Any official statement or other prospectus used by the agency in offering taxable securities for sale shall clearly indicate that the securities are not the debt or obligation of the state or of the agency except to the extent provided in this section.

(d) All proceeds received by the agency pursuant to this chapter shall be deposited in the Taxable Securities Account which is hereby created in the California Housing Finance Fund. Any moneys appropriated to the agency for the purposes of this chapter shall be deposited in the Taxable Securities Account and shall be repaid from revenues received by the agency pursuant to this chapter.

SEC. 10. Section 51404 of the Health and Safety Code is repealed.

SEC. 11. The Legislature finds and declares that of the twenty million dollars ($20,000,000) originally appropriated to the Supplementary Bond Security Account from the General Fund and advanced to the California Housing Finance Agency, ten million nine hundred ninety-six thousand nine hundred ninety-one dollars ($10,996,991) has been previously repaid on account of this advance as provided in Section 51368 of the Health and Safety Code. Notwithstanding any other provision of law, the agency shall repay to the General Fund the remaining balance of nine million three thousand nine dollars ($9,003,009) in annual installments at the end of each fiscal year in the amount of the interest earned on the sum of twenty million dollars ($20,000,000) invested by the agency for that purpose until the remaining balance shall have been repaid in full.

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Automatic repeal of certain provisions of Division 31 of the Health and Safety Code at the end of 1987, as well as federal legislation enacted in 1986 regarding the taxability of interest on certain housing bonds issued by governmental entities, would otherwise prevent the California Housing Finance Agency from continuing to meet its statutory mandate to provide affordable housing to very low, low, and moderate income Californians, and inhibit flexibility needed to accomplish its financing of single and multifamily housing programs. Additionally, it is necessary to provide for uniform and consolidated reporting procedures for the agency. In order to prevent delay in implementing these programs, it is necessary that this act go into immediate effect.

CHAPTER 905

An act to add Sections 82048.3, 82048.5, 84108, 84218, 84219, 84220, 84221, and 84305.5 to the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 19, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 82048.3 is added to the Government Code, to read:

82048.3. "Slate mailer" means a mass mailing which supports or opposes a total of four or more candidates or ballot measures.

SEC. 2. Section 82048.5 is added to the Government Code, to read:

82048.5. (a) "Slate mailer organization" means, except as provided in subdivision (b), any person who, directly or indirectly, does all of the following:

(1) Is involved in the production of one or more slate mailers and exercises control over the selection of the candidates and measures to be supported or opposed in the slate mailers.

(2) Receives or is promised payments totaling five hundred dollars ($500) or more in a calendar year for the production of one or more slate mailers.

(b) Notwithstanding subdivision (a), a slate mailer organization shall not include any of the following:

(1) A candidate or officeholder or a candidate's or officeholder's controlled committee.

(2) An official committee of any political party.

(3) A legislative caucus committee.

(4) A committee primarily formed to support or oppose a candidate, officeholder, or ballot measure.

(c) The production and distribution of slate mailers by a slate mailer organization shall not be considered making contributions or expenditures for purposes of subdivision (b) or (c) of Section 82013. If a slate mailer organization makes contributions or expenditures other than by producing or distributing slate mailers, and it reports those contributions and expenditures pursuant to Sections 84218 and 84219, no additional campaign reports shall be required of the slate mailer organization pursuant to Section 84200 or 84200.5.

SEC. 3. Section 84108 is added to the Government Code, to read:

84108. (a) Every slate mailer organization shall comply with the requirements of Sections 84100, 84101, 84103, and 84104.

(b) The statement of organization of a slate mailer organization shall include:

(1) The name, street address, and telephone number of the organization.

(2) The full name, street address, and telephone number of the treasurer and other principal officers.

(3) The full name, street address, and telephone number of each person with final decisionmaking authority as to which candidates or measures will be supported or opposed in the organization's slate mailers.

(c) The statement of organization shall be filed with the Secretary of State within 10 days after the slate mailer organization receives or is promised five hundred dollars ($500) or more for producing one or more slate mailers. However, if an entity qualifies as a slate mailer organization before the date of an election in which it is required to file preelection statements, but after the closing date of the last campaign statement required to be filed before the election pursuant to Section 84218, the slate mailer organization shall file with the Secretary of State, by telegram or personal delivery within 24 hours of qualifying as a slate mailer organization, the information required to be reported in the statement of organization.

SEC. 4. Section 84218 is added to the Government Code, to read:

84218. (a) A slate mailer organization shall file semiannual campaign statements for each period in which it has received payments totaling five hundred dollars ($500) or more from any person for the support of or opposition to candidates or ballot measures in a slate mailer, or in which it has expended five hundred dollars ($500) or more to produce one or more slate mailers. The semiannual statements shall be filed no later than July 31 for the period ending June 30, and no later than January 31, for the period ending December 31.

(b) In addition to the semiannual statements required by subdivision (a), slate mailer organizations shall file preelection statements as follows:

(1) Any slate mailer organization which produces a slate mailer supporting or opposing candidates or measures being voted on in an election held upon the first Tuesday after the first Monday in June or November of an even-numbered year shall file the statements specified in Section 84200.7 if, during the period covered by the preelection statement, the slate mailer organization receives payments totaling five hundred dollars ($500) or more from any person for the support of or opposition to candidates or ballot measures in one or more slate mailers, or expends five hundred dollars ($500) or more to produce one or more slate mailers.

(2) Any slate mailer organization which produces a slate mailer supporting or opposing candidates or measures being voted on in an election held on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year shall file the statements specified in Section 84200.8 if, during the period covered by the preelection statement, the slate mailer organization receives payments totaling five hundred dollars ($500) or more from any person for the support of or opposition to candidates or ballot measures in one or more slate mailers, or expends five hundred

dollars ($500) or more to produce one or more slate mailers.

(c) A slate mailer organization shall file two copies of its campaign reports with the clerk of the county in which it is domiciled. A slate mailer organization is domiciled at the address listed on its statement of organization unless it is domiciled outside California, in which case its domicile shall be deemed to be Los Angeles County for purposes of this section.

In addition, slate mailer organizations shall file campaign reports as follows:

(1) A slate mailer organization which produces one or more slate mailers supporting or opposing candidates or measures voted on in a state election, or in more than one county, shall file campaign reports in the same manner as state general purpose committees pursuant to subdivision (a) of Section 84215.

(2) A slate mailer organization which produces one or more slate mailers supporting or opposing candidates or measures voted on in only one county, or in more than one jurisdiction within one county, shall file campaign reports in the same manner as county general purpose committees pursuant to subdivision (d) of Section 84215.

(3) A slate mailer organization which produces one or more slate mailers supporting or opposing candidates or measures voted on in only one city shall file campaign reports in the same manner as city general purpose committees pursuant to subdivision (e) of Section 84215.

(4) Notwithstanding the above, no slate mailer organization shall be required to file more than the original and one copy, or two copies, of a campaign report with any one county or city clerk or with the Secretary of State.

SEC. 5. Section 84219 is added to the Government Code, to read:

84219. Whenever a slate mailer organization is required to file campaign reports pursuant to Section 84218, the campaign report shall include the following information:

(a) The total amount of receipts during the period covered by the campaign statement and the total cumulative amount of receipts. For purposes of this section only, "receipts" means payments received by a slate mailer organization for production and distribution of slate mailers.

(b) The total amount of disbursements made during the period covered by the campaign statement and the total cumulative amount of disbursements. For purposes of this section only, "disbursements" means payment made by a slate mailer organization for the production or distribution of slate mailers.

(c) For each candidate or committee that is a source of receipts totaling one hundred dollars ($100) or more during the period covered by the campaign statement:

(1) The name of the candidate or committee, identification of the jurisdiction and the office sought or ballot measure number or letter, and if the source is a committee, the committee's identification number, street address, and the name of the candidate or measure

on whose behalf or in opposition to which the payment is made.

(2) The date and amount received for each receipt totaling one hundred dollars ($100) or more during the period covered by the campaign statement.

(3) The cumulative amount of receipts on behalf of or in opposition to the candidate or measure.

(d) For each person other than a candidate or committee who is a source of receipts totaling one hundred dollars ($100) or more during the period covered by the campaign statement:

(1) Identification of the jurisdiction, office or ballot measure, and name of the candidate or measure on whose behalf or in opposition to which the payment was made.

(2) Full name, street address, name of employer or, if self-employed, name of business, of the source of receipts.

(3) The date and amount received for each receipt totaling one hundred dollars ($100) or more during the period covered by the campaign statement.

(4) The cumulative amount of receipts on behalf of or in opposition to the candidate or measure.

(e) For each candidate or ballot measure not reported pursuant to subdivision (c) or (d), but who was supported or opposed in a slate mailer sent by the slate mailer organization during the period covered by the report, identification of jurisdiction, office or ballot measure, and name of the candidate or measure who was supported or opposed.

(f) The total amount of disbursements made during the period covered by the campaign statement to persons who have received one hundred dollars ($100) or more.

(g) The total amount of disbursements made during the period covered by the campaign statement to persons who have received less than one hundred dollars ($100).

(h) For each person to whom a disbursement of one hundred dollars ($100) or more has been made during the period covered by the campaign statement:

(1) His or her full name.

(2) His or her street address.

(3) The amount of each disbursement.

(4) A brief description of the consideration for which each disbursement was made.

(5) The information required in paragraphs (1) to (4), inclusive, for each person, if different from the payee, who has provided consideration for a disbursement of one hundred dollars ($100) or more during the period covered by the campaign statement.

(i) Cumulative disbursements, totaling one thousand dollars ($1,000) or more, made directly or indirectly to any person listed in the slate mailer organization's statement of organization. For purposes of this subdivision, a disbursement is made indirectly to a person if it is intended for the benefit of or use by that person or a member of the person's immediate family, or if it is made to a

business entity in which the person or member of the person's immediate family is a partner, shareholder, owner, director, trustee, officer, employee, consultant, or holds any position of management or in which the person or member of the person's immediate family has an investment of one thousand dollars ($1,000) or more. This subdivision shall not apply to any disbursement made to a business entity whose securities are publicly traded.

(j) The full name, street address, and telephone number of the slate mailer organization and of the treasurer.

(k) Whenever a slate mailer organization also qualifies as a general purpose committee pursuant to Section 82027.5, the campaign report shall include, in addition to the information required by this section, the information required by Section 84211.

SEC. 6. Section 84220 is added to the Government Code, to read:

84220. If a slate mailer organization receives a payment of two thousand five hundred dollars ($2,500) or more for purposes of supporting or opposing any candidate or ballot measure in a slate mailer, and the payment is received at a time when, if the payment were a contribution it would be considered a late contribution, then the slate mailer organization shall report the payment in the manner set forth in Section 84203 for candidates and committees when reporting late contributions received. The slate mailer organization shall, in addition to reporting the information required by Section 84203, identify the candidates or measures whose support or opposition is being paid for, in whole or in part, by each late payment.

SEC. 7. Section 84221 is added to the Government Code, to read:

84221. Slate mailer organizations shall terminate their filing obligations in the same manner as applies to committees qualifying under subdivision (a) of Section 82013.

SEC. 8. Section 84305.5 is added to the Government Code, to read:

84305.5. (a) No slate mailer organization shall send a slate mailer unless:

(1) The name, street address, and city of the slate mailer organization are shown on the outside of each piece of slate mail and on at least one of the inserts included with each piece of slate mail in no less than 8-point roman type which shall be in a color or print which contrasts with the background so as to be easily legible. A post office box may be stated in lieu of a street address if the organization's street address is a matter of public record with the Secretary of State's Political Reform Division.

(2) At the top or bottom of the front side or surface of at least one insert or at the top or bottom of one side or surface of a postcard or other self-mailer, there is a notice in at least 8-point roman, boldface type, which shall be in a color or print which contrasts with the background so as to be easily legible, and in a printed or drawn box and set apart from any other printed matter. The notice shall consist of the following statement:

NOTICE TO VOTERS

THIS DOCUMENT WAS PREPARED BY (name of slate mailer organization), NOT AN OFFICIAL POLITICAL PARTY ORGANIZATION. Appearance in this mailer does not necessarily imply endorsement of others in this mailer. Appearance is paid for and authorized by each candidate and ballot measure which is designated by an *.

(3) The name, street address, and city of the slate mailer organization as required by paragraph (1) and the notice required by paragraph (2) may appear on the same side or surface of an insert.

(4) Each candidate and each ballot measure which has paid to appear in the slate mailer is designated by *. Any candidate or ballot measure which has not paid to appear in the slate mailer is not designated by *.

The * required by this subdivision shall be of the same type size, type style, color or contrast, and legibility as is used for the name of the candidate or the ballot measure name or number and position advocated to which the * designation applies except that in no case shall the * be required to be larger than 10-point boldface type. The designation shall immediately follow the name of the candidate, or the name or number and position advocated on the ballot measure where the designation appears in the slate of candidates and measures. If there is no slate listing, the designation shall appear at least once in at least 8-point boldface type, immediately following the name of the candidate, or the name or number and position advocated on the ballot measure.

(b) For purposes of the designations required by paragraph (4) of subdivision (a), the payment of any sum made reportable by the provisions of subdivision (c) of Section 84219 by or at the behest of a candidate or committee, whose name or position appears in the mailer, to the slate mailer organization, shall constitute a payment to appear, requiring the * designation. Such payment shall also be deemed to constitute authorization to appear in the mailer.

(c) A slate mailer which complies with the requirements of this section shall be deemed to satisfy the requirements of Sections 11703 and 11704 of the Elections Code.

SEC. 8.5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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. 9. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974

within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 906

An act to amend Section 25612 of the Health and Safety Code, relating to seafood, and making an appropriation therefor.

[Approved by Governor September 19, 1987. Filed with Secretary of State September 21, 1987.]

I am deleting the $30,000 appropriation contained in Section 4 of Senate Bill No. 1188.

This bill would appropriate $30,000 to the Department of Health Services to conduct a shellfish sampling and monitoring program in Humboldt Bay and prohibits the sale of such seafood if the study determines a threat to human health.

I approved a $1.3 million appropriation in 1985 to support a study of marine pollution and related health concerns. It is more appropriate to direct funds from this account for the proposed Humboldt Bay monitoring program rather than provide an additional appropriation.

With this deletion, I approve Senate Bill No. 1188.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 25612 of the Health and Safety Code is amended to read:

25612. The department, utilizing available funds and in cooperation with the Department of Fish and Game and the Joint Committee on Fisheries and Aquaculture, shall do all of the following:

(a) Cooperate with any federal agency that conducts monitoring of marine life or ocean waters, or both, at the sites of radioactive waste dumping off the California coast to determine the effects of the dumping.

(b) Purchase and test samples of seafood taken in the vicinity of the Farallon Islands radioactive waste dump site to determine whether the seafood contains radioactivity beyond natural and artificial background levels.

(c) Establish a scientific advisory committee on ocean dumping of radioactive waste. The committee shall include, but not be limited to, scientists from the staffs of the department, the Department of Fish and Game, the California Coastal Commission, the Senate Office of Research, the Assembly Office of Research, the faculties of the University of California and the California State University, and private nonprofit marine resource and public policy organizations. The advisory committee shall meet at least once a year and design the procedures for the testing required by subdivision (b), subject to approval by the department. The advisory committee shall also analyze the results of the monitoring conducted pursuant to subdivision (a) and the testing conducted pursuant to subdivision

(b), and make any recommendations that it deems appropriate to the department, the Department of Fish and Game, and the Legislature. The members of the committee shall serve without compensation.

(d) Make annual reports to the Legislature on the implementation of this section, including any recommendations for legislation it deems necessary to protect the health of Californians.

(e) Take emergency action pursuant to the general authority contained in the Sherman Food, Drug, and Cosmetic Law (Division 21 (commencing with Section 26000)) to prohibit the commercial sale of seafood for human consumption if, in the judgment of the director, samples analyzed pursuant to subdivision (b), are found to contain radioactivity that poses a threat to human health.

SEC. 2. The Legislature finds and declares that good water quality in Humboldt Bay is critical to beneficial uses in the area, including the culture and harvesting of shellfish. While the municipal and industrial dischargers, the North Coast Regional Water Quality Control Board, and the Environmental Protection Agency have spent millions of dollars in an attempt to improve the water quality of Humboldt Bay, there has been no assessment of the effectiveness of these programs. A shellfish sampling study is necessary to assess the impact of the State Department of Health Services' 1987 relaxation of shellfish harvesting restrictions.

SEC. 3. The State Department of Health Services shall conduct a shellfish sampling and monitoring program in Humboldt Bay. The department shall submit a report of the findings of that program to the Legislature on or before July 1, 1988.

SEC. 4. The sum of thirty thousand dollars ($30,000) is hereby appropriated from the General Fund to the State Department of Health Services for expenditures pursuant to Section 3 of this act.

CHAPTER 907

An act relating to environmental protection.

[Became law without Governor's signature. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. The Department of Transportation may grant right of entry to real property near Adobe Falls to the City of San Diego for park and recreational purposes under the condition that the City of San Diego maintain the property.

CHAPTER 908

An act to add and repeal Chapter 2.8 (commencing with Section 17070) of Part 10 of Division 2 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. This act shall be known and may be cited as the Mello-Condit-McClintock Tax Rebate Act of 1987.

SEC. 2. Chapter 2.8 (commencing with Section 17070) is added to Part 10 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.8. TAX REBATES

17070. (a) For purposes of returning excess revenues in the 1986–87 fiscal year as required pursuant to Section 2 of Article XIII B of the California Constitution, a tax reduction (hereafter referred to as "rebate") of 15 percent against the "tax imposed by this part" (as defined in subdivision (b)) shall be allowed to every qualified taxpayer (as defined in subdivision (c)) with respect to the 1986 taxable year, for excess revenues in the 1986–87 fiscal year. The rebates provided by this section shall not be less than the amounts specified in paragraph (1) of subdivision (e) and shall not exceed the amounts determined in paragraph (2) of subdivision (e).

(b) For the purpose of this section, "tax imposed by this part" means the sum of paragraphs (1) and (2) as follows:

(1) The tax under either Section 17041 or 17048, minus all credits allowed by this part other than the renter credit (Section 17053.5), the credit for excess unemployment insurance (Section 17061), the credit for withholding (Section 18551.1), and any other refundable credits provided by this part.

(2) The tax on preference income imposed by Section 17062, the tax on the early withdrawal from an individual retirement account imposed by Section 17082, and the tax on the early withdrawal from a Keogh or annuity contract imposed by Section 17507.

(c) For purposes of this section, "qualified taxpayer" means any of the following individuals:

(1) Any individual who filed a California state tax return for the 1986 taxable year on or before the due date provided in Section 18551 or any allowable extension thereof, but in no event later than October 15, 1987.

(2) Any individual who received property tax assistance pursuant to Chapter 1 (commencing with Section 20501) of Part 10.5 for the 1986–87 fiscal year.

(d) Following the transfer by the Controller to the Special Fund for Economic Uncertainties for the 1986–1987 fiscal year pursuant to Section 16418 of the Government Code, the Controller shall transfer the unappropriated balance of the General Fund to the Appropriations Limit Impound Account, which is hereby created in the General Fund. The Controller shall certify to the Franchise Tax Board the amount so transferred no later than November 1, 1987.

(e) Upon receipt of the Controller's certification, the Franchise Tax Board shall determine the amounts of the rebates as follows:

(1) (A) The minimum rebate amount allowable for all qualified taxpayers, as defined in subdivision (c), shall be thirty-two dollars ($32) if the qualified taxpayer is a single individual or a married person filing a separate return. If the qualified taxpayer is a married couple filing a joint return, a head of household, or a surviving spouse, as defined in Section 17046, the minimum rebate amount allowable shall be sixty-four dollars ($64). A qualified taxpayer, as defined in paragraph (2) of subdivision (c), shall be eligible for the rebate amount for a single individual or a married person filing a separate return.

(B) Based on the minimum amounts specified in subparagraph (A), the Franchise Tax Board shall determine the total amount of the rebates allowed to qualified taxpayers, exclusive of those qualified taxpayers defined in paragraph (1) of subdivision (c) who are entitled to a rebate amount greater than the applicable amounts specified in subparagraph (A).

(2) (A) The Franchise Tax Board shall subtract from the amount certified by the Controller pursuant to subdivision (d) the total amount of rebates determined in subparagraph (B) of paragraph (1).

(B) Based on the amount determined in subparagraph (A), the Franchise Tax Board shall determine for each qualified taxpayer defined in paragraph (1) of subdivision (c) who is entitled to a rebate amount greater than the applicable amount specified in subparagraph (A) of paragraph (1), a rebate amount which is equal to 15 percent of the amount of each qualified taxpayer's liability for the tax imposed by this part for the 1986 taxable year, but in no event to exceed a maximum rebate amount for all those qualified taxpayers so that the total amount to be rebated to those qualified taxpayers is equal to the amount determined in subparagraph (A). In making this determination, the Franchise Tax Board shall determine a maximum rebate amount for a married couple filing a joint return, a head of household, or a surviving spouse which is twice the maximum rebate amount for a single individual or a married person filing a separate return.

(f) Based on the determinations made pursuant to subdivision (e), the Franchise Tax Board shall determine the actual amount of the tax rebate for each qualified taxpayer and the total amount of the tax rebates for all qualified taxpayers. In that regard, no individual shall receive a tax rebate as a qualified taxpayer defined in paragraph

(2) of subdivision (c), if that individual is also eligible for a tax rebate as a qualified taxpayer defined in paragraph (1) of subdivision (c).

(g) The Franchise Tax Board shall certify to the Controller no later than November 15, 1987, the names and addresses of all qualified taxpayers and the actual amount of the rebate payment for which each qualified taxpayer is eligible.

(h) The Controller shall issue the required rebate payments no later than January 15, 1988.

(i) All rebate payments which are returned shall be redeposited by the Controller in the Appropriations Limit Impound Account.

17070.1. All references in this chapter to sections in this code which are not enacted by this chapter are to sections as amended or to be amended and to successor sections.

17070.2. This chapter shall remain in effect only until June 30, 1988, and on that date is repealed.

SEC. 3. This act shall become operative only if AB 2609 of the 1987–88 Regular Session is chaptered.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide sufficient time to complete the tax rebate provided by this act, it is necessary that this act take effect immediately.

CHAPTER 909

An act to amend Section 2453 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 21, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 2453 of the Business and Professions Code is amended to read:

2453. (a) It is the policy of this state that holders of M.D. degrees and D.O. degrees shall be accorded equal professional status and privileges as licensed physicians and surgeons.

(b) Notwithstandng any other provision of law, no health facility subject to licensure under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, no health care service plan, nonprofit hospital service plan, policy of disability insurance, self-insured employer welfare benefit plan, and no agency of the state or of any city, county, city and county, district, or other political subdivision of the state shall discriminate with respect to employment, staff privileges, or the provision of, or contracts for,

professional services against a licensed physician and surgeon on the basis of whether the physician and surgeon holds an M.D. or D.O. degree. This section shall not be construed to require a disability insurer health care service plan or hospital service plan to employ, offer staff privileges, or contract for professional services with a class of physician who holds an M.D. or D.O. degree. However, this subdivision shall not prohibit a school of allopathic medicine or a school of osteopathic medicine from employing a physician and surgeon as an instructor on the basis of whether the physician and surgeon holds an M.D. or D.O. degree, where the subject matter to be taught specifically requires allopathic or osteopathic training and experience.

(c) Any violation of the provisions of subdivision (b) may be enjoined in an action brought in the name of the people of the State of California by the district attorney of the county in which the violation occurs, upon receipt of a complaint by an aggrieved physician and surgeon.

CHAPTER 910

An act to amend Sections 668, 773.7, 773.8, 774.2, and 774.3 of, and to add Section 655.4 to, the Harbors and Navigation Code, relating to vessels.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 655.4 is added to the Harbors and Navigation Code, to read:

655.4. (a) No person shall serve as a crew member on any charter boat while under the influence of intoxicating liquor, any drug, or the combined influence of intoxicating liquor and any drug.

(b) No person shall serve as a crew member on any charter boat while under the influence of intoxicating liquor, any drug, or under the combined influence of intoxicating liquor and any drug, and while so serving, do any act forbidden by law, or neglect any duty imposed by law in the use of the vessel, which act or neglect proximately causes bodily injury to any person other than himself or herself.

SEC. 2. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates Section 652, 654, 654.05, 654.06, 655.2, 655.3, 659, or 663.6, or any regulations adopted by the department pursuant thereto, is guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars ($100) or imprisonment in the county jail for not to exceed five days, or both,

for each violation.

(b) Any person who violates subdivision (a) or (b) of Section 658 is guilty of a misdemeanor and shall be punished by a fine of not to exceed two hundred dollars ($200) for each violation.

(c) Any person who violates Section 652.5, subdivision (a) of Section 655, Section 656 or 656.1, subdivision (d) or (e) of Section 658, or any rules and regulations adopted by the department pursuant to subdivision (b) or (c) of Section 660, is guilty of a misdemeanor and shall be punished by a fine of not to exceed one thousand dollars ($1,000) or imprisonment in the county jail for not to exceed six months, or both, for each violation.

(d) Any person convicted of a first violation of subdivision (b), (c), or (d) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not to exceed one thousand dollars ($1,000) or imprisonment in the county jail for not to exceed six months, or both.

(e) Any person convicted of a second or subsequent violation of subdivision (b), (c), or (d) of Section 655 within five years of the first conviction shall be punished by a fine of not to exceed one thousand dollars ($1,000) or imprisonment in the county jail for not to exceed one year, or both.

(f) Any person convicted of a violation of subdivision (e) of Section 655 shall be punished by imprisonment in the state prison, or in the county jail for not less than 90 days or more than one year, and by a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(g) If any person is convicted of a violation of subdivision (e) of Section 655 within five years of a prior conviction of a violation of subdivision (b), (c), or (d) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than five days or more than one year and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000). If any person is convicted of a violation of subdivision (e) of Section 655 within five years of a prior conviction of a violation of subdivision (e) of Section 655 or of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than 90 days or more than one year, and pay fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(h) The court may not absolve a person who is convicted of a violation of subdivision (e) of Section 655 within five years of a prior conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 or of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (i).

(i) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a prior conviction of an

offense under subdivision (b), (c), (d), or (e) of Section 655 or of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a prior conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a prior conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

(j) Any person convicted of a violation of Section 656.2 or 656.3 shall be punished by a fine of not to exceed ten thousand dollars ($10,000) or imprisonment in the state prison or in the county jail for not to exceed one year, or both.

(k) Any person convicted of a violation of Section 658.5 shall be punished by a fine of not to exceed one hundred dollars ($100).

SEC. 3. Section 773.7 of the Harbors and Navigation Code is amended to read:

773.7. The operator, or the operator's employee or agent, of a charter boat, prior to getting underway, shall orient each passenger concerning emergency procedures. A public announcement shall be made at the beginning of each trip to afford all passengers knowledge of the stowage location of life preservers, a demonstration of the proper method of donning and adjusting life preservers, the type and location of all lifesaving devices carried on the vessel, and the location of and contents of the emergency check-off list as prescribed in 46 C.F.R. 185.25-1. This public announcement shall be identified as a safety briefing in compliance with state law so as to differentiate it from a general information announcement.

SEC. 4. Section 773.8 of the Harbors and Navigation Code is amended to read:

773.8. (a) A charterer or operator who organizes charter boat trips shall inform each adult passenger as soon as practicable after the passenger contracts or pays for passage or boards the charter boat, whichever occurs first, that life jackets will be provided at the adult passenger's request. Adult and minor passengers shall be informed that life jackets are required to be worn at the direction of the operator or the operator's employee or agent.

(b) When leaving or returning to port, the operator shall use reasonable care in securing or causing to be secured objects which may cause injury to passengers.

SEC. 5. Section 774.2 of the Harbors and Navigation Code is amended to read:

774.2. The operation of Section 655, 773.5, 773.7, or 774.1 or subdivision (b) of Section 773.8 shall be suspended if the Coast Guard or other appropriate federal agency has adopted and is enforcing a

substantially similar regulation which conflicts with those sections.

SEC. 6. Section 774.3 of the Harbors and Navigation Code is amended to read:

774.3. (a) Except as provided in Section 774, violation of any provision of this article is a misdemeanor punishable by 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 the fine and imprisonment.

(b) Any operator who violates any provision of this article shall be liable for a civil penalty of not more than fifty thousand dollars ($50,000) for each violation. The action shall be brought in the manner specified in Section 17206 of the Business and Professions Code.

(c) Any violation of this article may be enjoined by the manner specified in Section 17203 of the Business and Professions Code and a violation of an injunction may be punished to the extent provided in Section 17207 of the Business and Professions Code.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 911

An act to amend Section 4300 of the Civil Code, relating to marriage.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 4300 of the Civil Code is amended to read:

4300. (a) Before any person, who is authorized to issue marriage licenses, shall issue any such license, each applicant therefor shall file with him or her a certificate from a duly licensed physician stating that the applicant has been given such examination, including a standard serological test, as may be necessary for the discovery of syphilis, made not more than 30 days prior to the date of issuance of the license, and that, in the opinion of the physician, the person either is not infected with syphilis, or if so infected, is not in a stage of that disease which is or may become communicable to the marital partner.

(b) The certificate shall also state whether the female applicant has laboratory evidence of immunological response to rubella (German measles). The certificate shall not contain evidence of

response to rubella where the female applicant (1) is over 50 years of age, or (2) has had a surgical sterilization or (3) presents laboratory evidence of a prior test declaring her immunity to rubella.

(c) The certificate shall indicate that a test, including any appropriate confirmatory tests for positive reactors, was offered to detect infection by the probable causative agent of acquired immune deficiency syndrome. It is the intention of the Legislature that the results of any such tests shall be transmitted to the marriage license applicant, and that follow-up counseling by a knowledgeable and experienced person shall be made available.

(d) When the results of any test performed in accordance with subdivision (c) to detect infection by the probable causative agent of AIDS are included in the medical record of the patient who is subject to the test, the inclusion is not a disclosure for purposes of Section 199.21 of the Health and Safety Code as long as it is recorded within a distinct and separate part of the medical record, which is available only to health care professionals working directly with the patient, and is only for the purposes of providing direct patient care. Disclosure of the distinct and separate part of the medical record, as described in this subdivision, shall not be made except as provided in Chapter 1.11 (commencing with Section 199.20) Division 1 of the Health and Safety Code.

(e) Any person who by law is validly able to obtain a marriage license in the State of California is validly able to give consent to any examinations and tests required by this article. In submitting the blood specimen to the laboratory the physician shall designate that this is a premarital test.

CHAPTER 912

An act to amend Section 14016 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 14016 of the Welfare and Institutions Code is amended to read:

14016. (a) The county in which the person resides, except as specified in subdivision (d), shall determine the eligibility of each person pursuant to Sections 14005.1, 14005.4, and 14005.7 and Article 4.4 (commencing with Section 14140), except that the department may contract with the federal Social Security Administration for the determination of Medi-Cal eligibility of persons eligible under Title XVI of the Social Security Act. Upon termination of such assistance, the county shall determine whether the person remains eligible for

Medi-Cal coverage under one of these sections.

(b) The department shall institute an eligibility quality control program, to verify the eligibility determination of a sample of persons in each county granted Medi-Cal eligibility under Section 14005.4, 14005.7, or 14005.8 or Article 4.4 (commencing with Section 14140).

(c) A review period shall be defined as one year and shall coincide with the federal fiscal year. The department shall draw a random sample of cases for each period. The random sample shall be drawn to ensure a minimum number of cases reviewed in each county in each review period according to the following:

(1) All cases shall be sampled in any county with less than 50 Medi-Cal cases.

(2) Fifty cases in any county with greater than 0.01 percent and less than or equal to .50 percent of the Medi-Cal cases.

(3) Seventy-five cases in any county with greater than .50 percent and less than or equal to 1 percent of the Medi-Cal cases.

(4) One hundred cases in any county with greater than 1 percent and less than or equal to 3 percent of the Medi-Cal cases.

(5) One hundred twenty-five cases in any county with greater than 3 percent and less than or equal to 10 percent of the Medi-Cal cases.

(6) Six hundred fifty cases in any county with greater than 10 percent of the Medi-Cal cases.

(d) When family members maintain separate residences, but eligibility is determined as a single unit because of the provisions of Section 14008, the county in which the parent or parents reside shall determine the eligibility for the entire unit.

(e) In administering the provisions of law and regulations related to eligibility determination the director shall impose such fiscal penalties as provided by this section to assure adequate county administrative performance.

(f) The director shall hold counties financially liable for payments made on behalf of ineligible persons or persons with an incorrect share of cost. When a sample case is found to include an ineligible person or a person with an understated share of cost, written notification shall be sent to the county department which describes the error and requests a written response within two weeks. The county shall indicate whether it agrees or disagrees with the findings. If the county disagrees, the department shall reevaluate the error findings, taking into consideration any additional facts contained in the county's response. The department shall again notify the county of the department's findings. If the county continues to disagree with the error findings, the county may appeal to the Chief of the Medi-Cal Policy Division, requesting that the department review the case and render a final decision. The director may reduce or waive the fiscal liability of a county if the department is unable to meet the minimum sample required, as defined in subdivision (c), or if an individual county experienced a natural disaster, job actions, or other

occurrences which impacted the findings in an individual county as determined by the director.

(g) The department shall utilize the methodology detailed in this subdivision to establish counties' fiscal penalties. The department shall determine each county's case error rate for each review period by dividing the number of completed case reviews in that county found in error by the number of case reviews in that county. State caused errors shall be determined by the department and shall not be included in this calculation. Case error rates shall be arrayed from highest to lowest. From this array, the department shall determine the percentage of counties liable as follows:

(1) The 60 percent of counties with the highest case error rates shall be liable if the state's dollar error rate exceeds the federal standard by 0.01 percent to 1 percent.

(2) The 70 percent of counties with the highest case error rates shall be liable if the state's dollar error rate exceeds the federal standard by greater than 1 percent and less than or equal to 2 percent.

(3) The 80 percent of counties with the highest case error rates shall be liable if the state's dollar error rate exceeds the federal standard by greater than 2 percent and less than or equal to 3 percent.

(4) The 90 percent of counties with the highest case error rates shall be liable if the state's dollar error rate exceeds the federal standard by greater than 3 percent and less than or equal to 4 percent.

(5) All counties shall be liable if the state's dollar error rate exceeds the federal standard by greater than 4 percent.

As used herein, "the state's dollar error rate" means the Medicaid dollar error rate reported to the department by the United States Department of Health and Human Services, less any portion of this error rate attributable to state caused errors. The term "federal standard" means the Medicaid dollar error rate standard to which the state is held accountable.

For each county determined liable, the department shall calculate a penalty multiple which shall be the product of a liable county's case error rate multiplied by the liable county's percentage of statewide Medi-Cal cases. Each county's fiscal penalty shall be the product of a county's penalty multiple divided by the sum of all penalty multiples, multiplied times the penalty bank. The penalty bank includes only quality control federal fiscal sanctions, federal withholds, federal disallowances, and any associated General Fund expenditures, minus the value of any state assumed errors and the General Fund share of the value of client caused errors. The case error rate and penalty multiple shall be adjusted by excluding client errors for the purpose of determining the associated General Fund expenditures.

If, after the department has assessed penalties to counties, the federal government reduces or eliminates any quality control federal

fiscal sanction, federal withhold or federal disallowance, the department shall reduce or eliminate the corresponding fiscal penalty assessment including any associated General Fund expenditures to liable counties.

(h) When a county welfare department contravenes state eligibility processing regulations and written instructions in a way that produces increased program benefits or administrative expenses but doesn't result in an increase in the eligibility dollar error rate, the director shall recoup from that county the additional administrative or program benefit costs above those which would have been incurred had that county not contravened the established state eligibility processing regulations and written instructions. This section shall not be construed to interfere with the rights of counties to out-station eligibility staff.

Notwithstanding the number of counties determined liable for fiscal penalties under this section, individual county corrective action plans as prescribed by the department shall be required from all counties which exceed a 15 percent case error rate.

(i) Any penalties imposed under this system shall be collected through direct repayment from liable counties rather than through any reduction in funds otherwise due to counties.

CHAPTER 913

An act relating to water resources development.

[Approved by Governor September 21, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. The Department of Water Resources shall conduct a reconnaissance-level investigation of the transfer of water from the Imperial Irrigation District, through the process of water marketing, to the San Diego County Water Authority. The investigation shall include consideration of the various alternatives available to the Imperial Irrigation District to market surplus water to the San Diego County Water Authority. The investigation shall also include consideration of costs, energy use, and potential energy production for alternate use and disposal of waste water from the San Diego Metropolitan Sewerage System. To the extent that funds are available after the above matters have been evaluated, the investigation shall also include consideration of the potential transfer of reclaimed water from San Diego County for use for environmental or irrigation purposes. The department shall perform the investigation within the limits of its existing resources and shall not expend more than twenty-five thousand dollars ($25,000) on the investigation. The department shall report to the Legislature not later than January 1, 1990, on the results of the investigation.

CHAPTER 914

An act to amend Sections 25244.6 and 25244.10 of, and to repeal and add Article 3 (commencing with Section 25130) of Chapter 6.5 of Division 20 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Article 3 (commencing with Section 25130) of Chapter 6.5 of Division 20 of the Health and Safety Code is repealed.

SEC. 2. Article 3 (commencing with Section 25130) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 3. Hazardous Waste Resource and Research Coordination Program

25130. The department shall establish the Hazardous Waste Resource and Research Coordination Program, which consists of the following two components:

(a) A data base containing information on known hazardous waste research being conducted within the state pursuant to Section 25131.

(b) A pool of research consultants qualified in the field of hazardous waste management established pursuant to Section 25132.

25131. (a) The department shall assemble a bibliographic cross-referenced data base containing all of the following information on known hazardous waste research programs which are ongoing within the state:

(1) The institution or organization sponsoring the research program.

(2) The principal investigators conducting the research.

(3) A brief description of the research, including anticipated applications of the resulting information.

(4) The specific problems facing hazardous waste generators that the research is designed to address, including, but not limited to, specific hazardous waste streams or specific production processes.

(5) A summary of results already achieved by the research program.

(6) The date on which the program began, and its expected completion date.

(b) The department shall update the data base annually, and the department shall make the information in the data base available to the public at a cost not greater than the department's printing and

mailing costs.

25132. (a) The department shall establish and maintain a pool of research consultants expert in the field of hazardous waste management. The department may consult with the individual members of the pool to develop a directed approach to research in hazardous waste management. This approach shall include, but is not limited to, emphasis on interdisciplinary research into the relationships between air, water, and soils as media for the spread of hazardous substances and toxic effects in the environment. The department may utilize these research consultants as needed to implement this chapter.

(b) Individual research consultants within the pool may receive compensation as determined by the department, including per diem and reimbursement for travel expenses incurred as a result of official business.

SEC. 3. Section 25244.6 of the Health and Safety Code is amended to read:

25244.6. The department, in consultation with the State Water Resources Control Board, the State Air Resources Board, and the California Waste Management Board, shall do all of the following:

(a) Implement a program to research, develop, and demonstrate hazardous waste reduction, recycling, and treatment technologies at appropriate locations throughout the state.

(b) On or before January 1, 1987, and, in consultation with industry and interested parties, adopt criteria for selecting projects which would receive grants to pay for the construction of equipment which would be used to demonstrate hazardous waste reduction, recycling, or treatment technologies. The criteria shall include provisions which require that, in assessing each project, the department consider the feasibility of the project's particular technology, the research and technical spinoffs likely to be generated by the project, the degree to which the findings of the projects can be disseminated and evaluated for replication elsewhere, and the consistency of, and contributions of, the project to the state's hazardous waste management program.

(c) Using the criteria adopted pursuant to subdivision (b), select projects to receive grants to construct equipment which would be used to demonstrate hazardous waste reduction, recycling, or treatment technologies. A grant issued by the department pursuant to this section is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of the Public Contract Code, including, but not limited to, Section 10295 of the Public Contract Code, or Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code. The department shall select projects which also meet at least one of the following requirements:

(1) The project has onsite, as well as offsite potential, for the reduction, recycling, or treatment of hazardous waste.

(2) The project has the potential to benefit, or be utilized by, small businesses.

(3) The project is applicable to a range of industries.

SEC. 4. Section 25244.10 of the Health and Safety Code is amended to read:

25244.10. The department may issue grants to, and enter into contracts with, universities, governmental agencies, and private organizations to research and develop hazardous waste reduction, recycling, or treatment technology. These grants may be applied to personnel, equipment, and administrative costs and shall, to the extent possible, be used to augment other sources of research and development funding, including federal and private funds. Any grant issued by the department pursuant to this section is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of the Public Contract Code, including, but not limited to, Section 10295 of the Public Contract Code, but a contract entered into pursuant to this section is subject to all applicable state laws governing contracts.

CHAPTER 915

An act to amend Sections 6006 and 6010 of, and to add Chapter 2.8 (commencing with Section 17070) to Part 10 of Division 2, of, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1987 Filed with Secretary of State September 21, 1987.]

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

SECTION 1. This act shall be known and may be cited as the Condit-Mello-McClintock Tax Rebate Act of 1987.

SEC. 2. The Legislature finds and declares that the revenues received by the state during the 1986–87 fiscal year have exceeded the appropriations limit determined pursuant to Article XIII B of the California Constitution. The Legislature further finds and declares that Chapter 2.8 (commencing with Section 17070) of Part 10 of Division 2 of the Revenue and Taxation Code implements the mandatory disposition of those excess revenues pursuant to Section 2 of Article XIII B of the California Constitution.

In this connection, the Legislature finds and declares that every taxpayer incurred California sales and use tax liability during the 1986–87 fiscal year in connection with the purchase or use of various taxable necessity items, including clothing, furniture, household goods, durables, nonprescription drugs, sundries, gasoline, and restaurant meals. The Legislature further finds and declares that the tax rebate provided by Section 17070 of the Revenue and Taxation Code to certain taxpayers who had no or a very small amount of California personal income tax liability for the 1986 taxable year

constitutes a return to them of a portion of the sales and use taxes paid by them during the 1986–87 fiscal year.

Thus, the Legislature further finds and declares that the tax rebate provided by Chapter 2.8 (commencing with Section 17070) of Part 10 of Division 2 of the Revenue and Taxation Code is for the purpose of meeting the requirements of Section 2 of Article XIII B of the California Constitution and constitutes a return of excess revenues which is substantially equivalent in value and effect to a revision of tax rates.

SEC. 3. Section 6006 of the Revenue and Taxation Code is amended to read:

6006. "Sale" means and includes:

(a) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. "Transfer of possession" includes only transactions found by the board to be in lieu of a transfer of title, exchange, or barter.

(b) The producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.

(c) The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others.

(d) The furnishing, preparing, or serving for a consideration of food, meals, or drinks.

(e) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(f) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(g) Any lease of tangible personal property in any manner or by any means whatsoever, for a consideration, except a lease of:

(1) Motion pictures or animated motion pictures, including television, films, and tapes.

(2) Linen supplies and similar articles when an essential part of the lease agreement is the furnishing of the recurring service of laundering or cleaning the articles.

(3) Household furnishings with a lease of the living quarters in which they are to be used.

(4) Mobile transportation equipment for use in transportation of persons or property as defined in Section 6023.

(5) Tangible personal property leased in substantially the same form as acquired by the lessor or leased in substantially the same form as acquired by a transferor, as to which the lessor or transferor has paid sales tax reimbursement or has paid use tax measured by the purchase price of the property. For purposes of this paragraph,

"transferor" shall mean the following:

(A) A person from whom the lessor acquired the property in a transaction described in subdivision (b) of Section 6006.5.

(B) A decedent from whom the lessor acquired the property by will or the laws of succession.

(6) A mobilehome, as defined in Sections 18008 and 18211 of the Health and Safety Code, other than a mobilehome originally sold new prior to July 1, 1980, and not subject to local property taxation.

(7) Paragraphs (1) and (5) and Section 6094.1 shall not apply to rentals or leases of video cassettes, video tapes, and video discs for private use under which the lessee or renter does not obtain or acquire the right to license, broadcast, exhibit, or reproduce the video cassette, video tape, or video disc.

SEC. 4. Section 6010 of the Revenue and Taxation Code is amended to read:

6010. "Purchase" means and includes:

(a) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. "Transfer of possession" includes only transactions found by the board to be in lieu of a transfer of title, exchange, or barter.

(b) When performed outside this state or when the customer gives a resale certificate pursuant to Article 3 (commencing with Section 6091) of Chapter 2, the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.

(c) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(d) A transfer for a consideration of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(e) Any lease of tangible personal property in any manner or by any means whatsoever, for consideration, except a lease of:

(1) Motion pictures or animated motion pictures, including television, films, and tapes.

(2) Linen supplies and similar articles when an essential part of the lease agreement is the furnishing of the recurring service of laundering or cleaning the articles.

(3) Household furnishings with a lease of the living quarters in which they are to be used.

(4) Mobile transportation equipment for use in transportation of persons or property as defined in Section 6023.

(5) Tangible personal property leased in substantially the same form as acquired by the lessor or leased in substantially the same form as acquired by a transferor, as to which the lessor or transferor has paid sales tax reimbursement or has paid use tax measured by the

purchase price of the property. For purposes of this paragraph, "transferor" shall mean the following:

(A) A person from whom the lessor acquired the property in a transaction described in subdivision (b) of Section 6006.5.

(B) A decedent from whom the lessor acquired the property by will or the laws of succession.

(6) A mobilehome, as defined in Sections 18008 and 18211 of the Health and Safety Code, other than a mobilehome originally sold new prior to July 1, 1980, and not subject to local property taxation.

(7) Paragraphs (1) and (5) and Section 6094.1 shall not apply to rentals or leases of video cassettes, video tapes, and video discs for private use under which the lessee or renter does not obtain or acquire the right to license, broadcast, exhibit, or reproduce the video cassette, video tape, or video disc.

SEC. 5. It is the intent of the Legislature that the State Board of Equalization in promulgating regulations affecting the imposition of the Sales and Use Tax Law on the production of animated motion pictures, determine that charges for animation, as used in the production of animated motion pictures, are not taxable.

As used in this section, "animation" includes, but is not limited to, all of the following:

(a) The drawing of step-by-step scenes necessary to produce the entire action.

(b) Inking or painting, or both, consisting of the tracing or painting of scenes prepared in subdivision (a) on celluloid cells.

(c) Photographing the cells in subdivision (b) on a continuous roll of film.

SEC. 6. The Legislature finds and declares that Sections 3 and 4 of this act do not constitute a change in, but are declaratory of, the existing law.

SEC. 7. An amount sufficient to pay the tax rebates required pursuant to Section 17070 of the Revenue and Taxation Code is hereby appropriated from the Appropriations Limit Impound Account in the General Fund to the Controller for that purpose. For purposes of subdivision (a) of Section 8 of Article XIII B of the California Constitution, the appropriation made by this section shall be deemed to be a refund of taxes.

SEC. 8. There is hereby appropriated from the General Fund the sum of six million nine hundred thousand dollars ($6,900,000) for allocation as follows:

(1) Four million seven hundred thousand dollars ($4,700,000) to the Controller in augmentation of Item 0840-001-001 of the Budget Act of 1987.

(2) Two million two hundred thousand dollars ($2,200,000) to the Franchise Tax Board in augmentation of Item 1730-001-001 of the Budget Act of 1987.

SEC. 9. This act shall become operative only if Senate Bill 47 of the 1987–88 Regular Session is chaptered.

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 to provide funding to complete in sufficient time the tax rebate program established by Section 17070 of the Revenue and Taxation Code, it is necessary that this act take effect immediately.

CHAPTER 916

An act to amend Section 199.81 of the Health and Safety Code, relating to health.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 21, 1987.]

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

SECTION 1. Section 199.81 of the Health and Safety Code is amended to read:

199.81. The State Department of Education shall provide information to school districts on acquired immune deficiency syndrome (AIDS), on AIDS-related conditions, and on Hepatitis B. This information shall include, but not be limited to, any appropriate methods school employees may employ to prevent exposure to AIDS and Hepatitis B, including information concerning the availability of a vaccine to prevent contraction of Hepatitis B, and that the cost of vaccination may be covered by the health plan benefits of the employees. This information shall be compiled and updated annually, or if there is new information, more frequently, by the State Department of Education in conjunction with the State Department of Health Services and in consultation with the California Conference of Local Health Officers. In order to reduce costs, this information may be included as an insert with other regular mailings to the extent practicable, and the information required to be provided on Hepatitis B shall be provided in conjunction with the information required to be provided on AIDS.

CHAPTER 917

An act to amend Sections 1621, 1623, 16090, 35015, 35111, 35700, 35756.5, 39617, 39802, 41002, 41341, 42120, 42122, 42125, 42126, 42127, 42239, 42600, 42601, 42602, 42610, 42810, 42840, 42842, 46013.7, 48206.3, 52321, 52501.5, 54444.2, and 56827 of, to add Section 39618.5 to, to repeal Section 46013.9 of, and to repeal and add Section 33003 of, the Education Code, to amend and renumber Section 19994.9 of the Government Code, to amend Item 6100-101-001 of Section 2.00 of the Budget Act of 1987, and to amend Section 4 of Chapter 1258 of the Statutes of 1986, relating to education.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 1621 of the Education Code is amended to read:

1621. On or before the date specified by the Superintendent of Public Instruction each year, the county board of education shall file with the Superintendent of Public Instruction a single-fund tentative budget showing all the purposes for which the county school service fund will need money.

The budget may also contain a general reserve in that sum as the county board of education may deem sufficient to meet the cash requirements of the next succeeding fiscal year until adequate proceeds of the taxes levied or apportionment of state funds are available.

The budget may also contain a designated fund balance which may be designated for any specific purpose as determined by the county board of education. Those funds shall be available for appropriation by a majority vote of the members of the county board of education.

The budget may also contain an unappropriated fund balance which shall be available for appropriation by a majority vote of the members of the county board of education to cover expenditures that have not been provided for, that have been insufficiently provided for, or for unforeseen requirements as they may arise.

The single fund tentative budget shall include estimated cash balances, estimated apportionments from the State School Fund, and an estimate of revenues from sources other than taxes on the secured roll of the equalized assessment roll of the county.

SEC. 3. Section 1623 of the Education Code is amended to read:

1623. (a) The county board of education shall hold a public hearing on the county school service fund budget. The public hearing shall be held any day on or before September 15, but at least three days following the availability of the proposed budget for public inspection. Notification of dates, times, and location, or locations at which the proposed budget may be inspected by the

public shall be published at least once in a newspaper of general circulation published within the county. The notification shall be no earlier than August 1, nor later than August 31, but not less than 10 days prior to the date set for the hearing. The cost of publication shall be a proper and legal charge against the county school service fund and shall not exceed the rate fixed by the board of supervisors for official advertising. The published notice shall include the time, place, and purpose of the public hearing, and other information that may be determined by the county board of education, and shall state that any taxpayer directly affected by the county school service fund budget may appear before the county board of education and speak to the proposed budget or any item therein.

Following the public hearing, the final budget shall be adopted by the county board of education and filed with the Superintendent of Public Instruction, the board of supervisors, and the county auditor.

(b) On or before November 1, the Superintendent of Public Instruction shall approve the county office budget after doing the following:

(1) Examining the adopted final budget to determine that proposed expenditures do not exceed the anticipated revenues and that the anticipated revenues are realistic.

(2) Examining the adopted final budget and suggesting, if necessary, any technical corrections needed to bring the budget into compliance with school financial and budget reporting requirements as prescribed in the California School Accounting Manual.

(c) If, after examining the final adopted budget of a county office of education, it is the opinion of the Superintendent of Public Instruction that the proposed expenditures will exceed anticipated revenues as described in paragraph (1) of subdivision (b) or that specific technical corrections as described in paragraph (2) of subdivision (b) should be made, he or she shall, by November 1, transmit to the county superintendent of schools, in writing, his or her recommendations and the reasons therefor.

(d) The county superintendent of schools and county board of education shall, by November 30, do the following:

(1) Review the recommendations of the Superintendent of Public Instruction at a regularly scheduled meeting of the county board of education.

(2) Respond to the recommendations of the Superintendent of Public Instruction. The response shall include the proposed actions to be taken, if any, as a result of the recommendations of the Superintendent of Public Instruction.

SEC. 4. Section 16090 of the Education Code is amended to read:

16090. The board of supervisors of the county, the county superintendent of which has jurisdiction over any district which under this chapter will have moneys withheld by the Controller from the apportionments to be made to it from the State School Fund during any fiscal year, shall annually at the time the board of supervisors makes the levy of taxes for county purposes, levy a tax

upon the property in the district sufficient to raise for the district the amount of money to be withheld by the Controller during the fiscal year in which the tax is levied. Effective July 1, 1988, that tax, when collected, shall be paid into the county treasury of the county, the county superintendent of schools of which has jurisdiction over the district for which the tax was levied, to the credit of a separate fund of the district to be known as the Tax Override Fund.

SEC. 5. Section 33003 of the Education Code is repealed.

SEC. 6. Section 33003 is added to the Education Code, to read:

33003. The board, through its own bylaws, shall provide for its operation and organization, including, but not limited to, the election of its officers and the establishment of its committees.

SEC. 7. Section 35015 of the Education Code is amended to read:

35015. As prescribed in subdivision (g) of Section 35035, the governing board of each school district shall certify, within 45 days after the close of the period being reported, in writing whether or not the school district is able to meet its financial obligations for the remainder of the fiscal year. These certifications shall be based upon the board's assessment of the district's probable cash within the county treasury and the district's probable unrestricted fund balances that will be available for meeting their obligations. The certifications shall be classified as positive, qualified, or negative certifications, as prescribed by the Superintendent of Public Instruction for the purposes of determining subsequent state agency actions pursuant to Section 35105.1. These certifications shall be based upon the financial and budgetary reports required by subdivision (g) of Section 35035 but may include additional financial information known by the governing board to exist at the time of each certification. A copy of each certification shall be filed with the county superintendent of schools. Copies of any certification in which the governing board is unable to certify unqualifiedly that these financial obligations will be met shall be sent to the Controller and the Superintendent of Public Instruction at the time of the certification, together with a completed transmittal form provided by the Controller. County superintendents shall comment within 75 days of the close of the reporting period on all school district certifications that are classified as qualified or negative pursuant to this section and send those comments to the Superintendent of Public Instruction and the Controller.

SEC. 8. Section 35111 of the Education Code is amended to read:

35111. (a) Except as provided in subdivisions (b) and (c), when a governing board has adopted a resolution specified in Section 35110, the elementary school district and the high school district shall be deemed to be a single school district for all purposes, including, but not limited to, budget and personnel matters, and the governing board shall be deemed to be the governing board of a single school district.

(b) When a governing board has adopted a resolution pursuant to Section 35110, the school districts under its jurisdiction shall continue

to be treated as separate school districts for purposes of computing state apportionments and allowances, and allocations of local property tax revenue.

(c) When a governing board has adopted a resolution pursuant to Section 35110, the school districts under its jurisdiction shall continue to hold title to the property of each district separately and any indebtedness for such property shall remain in the indebtedness of each separate district.

(d) When a governing board has adopted a resolution pursuant to Section 35110, the school districts under its jurisdiction shall publish annually, in a newspaper of local circulation, the general fund income and expenses of both districts. The publication documents shall indicate the amount transferred to each district pursuant to Section 35112 from the combined special reserve of both districts. The governing board shall adopt a resolution authorizing the specific transfers pursuant to Section 35112 at the time of the final budget adoption.

(e) For the purpose of Section 53892.1 of the Government Code, common governing boards, as described in Section 35110, shall be reported as one single educational entity.

SEC. 9. Section 35700 of the Education Code is amended to read:

35700. An action to reorganize one or more districts is initiated upon the filing, with the county superintendent of schools, of a petition to reorganize one or more school districts signed by any of the following:

(a) At least 25 percent of the registered voters residing in the territory proposed to be reorganized if the territory is inhabited. Where the petition is to reorganize territory in two or more school districts, the petition shall be signed by at least 25 percent of the registered voters in that territory in each of those districts.

(b) The owner of the property, provided that territory is uninhabited and the owner thereof has filed either a tentative subdivision map with the appropriate county or city agency or an application for any project, as defined in Section 21065 of the Public Resources Code, with one or more local agencies.

(c) A majority of the members of the governing boards of each of the districts that would be affected by the proposed reorganization.

SEC. 10. Section 35756.5 of the Education Code is amended to read:

35756.5. In the case of the transfer of territory from one district to another, if the transfer is opposed by the governing boards of one or more of the districts affected with an average daily attendance of 900 or less, the territory in which the election is held shall include the entire territory of the districts opposing the transfer. Each district with an average daily attendance of 900 or less which is included in an election because of the objection of its governing board to the transfer shall bear the additional cost of holding the election in that portion of its territory not otherwise included in the election. When a majority of the votes cast in the school district opposing the transfer

and a majority of the votes cast in the entire territory in which the election is held are in favor of the reorganization, the proposal carries.

SEC. 11. Section 39617 of the Education Code is amended to read:

39617. (a) The Legislature finds and declares that the quality of protective equipment worn by participants in high school interscholastic football is a significant factor in the occurrence of injuries to such participants and that it is therefore necessary to insure minimum standards of quality for the equipment in order to prevent unnecessary injuries to such participants.

(b) No football helmets shall be worn by participants in high school interscholastic football unless the equipment has been certified for use by the National Operating Committee on Standards for Athletic Equipment or any other recognized certifying agency in the field.

This section shall not be construed as relieving school districts from the duty of maintaining football protective equipment in a safe and serviceable condition.

SEC. 11.5. Section 39618.5 is added to the Education Code, to read:

39618.5. Notwithstanding Section 39618, whenever the state funds provided pursuant to Sections 39619 and 39619.2 are insufficient to fully match the local funds deposited in the deferred maintenance fund, the governing board of each school district may transfer the excess local funds deposited in that fund to any other expenditure classifications in other funds of the district. A resolution providing for the transfer shall be approved by a two-thirds vote of the governing board members and filed with the county superintendent of schools and the county auditor.

SEC. 12. Section 39802 of the Education Code is amended to read:

39802. In order to procure the service at the lowest possible figure consistent with proper and satisfactory service, the governing board shall, whenever an expenditure of more than ten thousand dollars ($10,000) is involved, secure bids pursuant to Sections 20111 and 20112 of the Public Contract Code whenever it is contemplated that a contract may be made with a person or corporation other than a common carrier or a municipally owned transit system or a parent or guardian of the pupils to be transported. The governing board may let the contract for the service to other than the lowest bidder.

SEC. 13. Section 41002 of the Education Code is amended to read:

41002. All moneys received by any school district or paid into the county or city and county treasury to the credit of the district from state apportionments, county, district or municipal taxes, other than moneys required to be placed in a separate fund of the school district, shall be deposited in the general fund of the district, which fund shall be in existence in each county and city and county treasury.

Nothing in this section shall be construed as discontinuing, nor as affecting the disposition of moneys in any of the separate funds of the school districts legally created or established in law.

SEC. 14. Section 41341 of the Education Code is amended to read:

41341. If during any fiscal year there is apportioned to a school district or to any fund from the State School Fund at least one hundred dollars ($100) more or at least one hundred dollars ($100) less than the amount to which the district or fund was entitled, the Superintendent of Public Instruction, in accordance with regulations that he or she is herewith authorized to adopt, not later than the third succeeding fiscal year from the fiscal year in which the computational error was made shall withhold from, or add to, the apportionment made during that fiscal year, the amount of the excess or deficiency, as the case may be. Notwithstanding any other provision of this code to the contrary, excesses withheld or deficiencies added by the Superintendent of Public Instruction under this section shall be added to or allowed from any portion of the State School Fund except that portion reserved as allowances for basic state aid.

SEC. 15. Section 42120 of the Education Code is amended to read:

42120. As used in this article, "budget" includes the tentative budget and the final budget of a school district.

SEC. 16. Section 42122 of the Education Code is amended to read:

42122. Effective July 1, 1988, each budget shall show a complete plan and itemized statement of all proposed expenditures of the school district and of all estimated revenues for the ensuing fiscal year, together with a comparison of revenues and expenditures for the existing fiscal year. The county superintendent of schools shall from his or her own records supply to the school district any information that the school district may need to make the comparisons required by this section.

SEC. 16.5. Section 42122 of the Education Code is amended to read:

42122. Effective July 1, 1988, each budget shall show a complete plan and itemized statement of all proposed expenditures of the school district and of all estimated revenues for the ensuing fiscal year, together with a comparison of revenues and expenditures for the existing fiscal year. The budget shall also include the appropriations limit and the total annual appropriations subject to limitation as determined pursuant to Division 9 (commencing with Section 7900) of Title 1 of the Government Code. The county superintendent of schools shall from his or her own records supply to the school district any information that the school district may need to make the comparisons required by this section.

SEC. 17. Section 42125 of the Education Code is amended to read:

42125. The budget may contain amounts to be known as the designated fund balance, which may be designated for any specific purpose as determined by the governing board of the school district, and the unappropriated fund balance. These funds shall be available for appropriation by a majority vote of the members of the governing board, to cover expenditures that have not been provided for or that may have been insufficiently provided for, or for unforeseen

requirements as they may arise.

SEC. 18. Section 42126 of the Education Code is amended to read:

42126. Effective July 1, 1988, each budget shall be made on the number of forms and upon the blanks or in the format prescribed by the Superintendent of Public Instruction. It shall be the duty of the Superintendent of Public Instruction to prepare standard forms or a format necessary to show the budgeting items and comparisons required by this article. The required forms or format shall be furnished to the school districts by the county superintendent of schools.

SEC. 19. Section 42127 of the Education Code is amended to read:

42127. (a) On or before the first day in July in each year, each school district shall file a tentative budget with the county superintendent of schools.

(1) The budget shall indicate the date, time, and location at which the governing board of the district will hold the public hearing required pursuant to Section 42103.

(2) If the governing board of the district does not want all or a portion of the property tax requirement levied for the purpose of making payments for the interest and principal on outstanding general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978, the budget shall include a statement of the amount or portion for which a levy shall not be made.

(b) On or before August 1, in each year, the county superintendent of schools:

(1) Shall examine and make technical corrections to the tentative budget and indicate changes he or she deems desirable or necessary to determine any tax requirement.

(2) Shall make any recommendations he or she deems necessary to ensure that the proposed expenditures do not exceed the anticipated revenues and that the anticipated revenues are realistic, and shall transmit to the governing board a written explanation of the reasons for those recommended changes.

(3) May make written recommendations as to anticipated revenues at any time prior to final adoption of the budget by the governing board of the district.

(4) May accept changes in the date, time, or location of the public hearing pursuant to Section 42103 and changes in the statement required by paragraph (2) of subdivision (a) of the amount or portion for which a property tax levy shall not be made.

(c) The county superintendent or the county auditor shall compute the actual amounts to be levied on the property tax rolls of the district for purposes which exceed apportionments to the district pursuant to Sections 95 to 100, inclusive, of the Revenue and Taxation Code. Each school district shall provide all data needed by the county superintendent or the county auditor to compute the amounts. On or before August 15, the county superintendent shall transmit the amounts so computed to the county auditor who shall compute the tax rates necessary to produce the amounts. On or before September

1, the county auditor shall submit the rate so computed to the board of supervisors for adoption.

(d) On or before September 15, the governing board of each school district shall adopt a final budget including any tax requirements computed pursuant to subdivision (c) as adjusted by paragraph (2) of subdivision (a) of Section 42127 and shall file that budget with the county superintendent of schools.

(e) On or before November 1, the county superintendent shall approve the adopted final budget for each school district after doing the following:

(1) Examining the adopted final budget to determine that the proposed expenditures do not exceed the anticipated revenues, including prior year ending balances, and that the anticipated revenues are realistic.

(2) Examining the adopted final budget and suggesting, if necessary, any technical corrections needed to bring the budget into compliance with school financial and budget reporting requirements as prescribed in the California School Accounting Manual.

(f) If, after examining the adopted final budget of a school district, it is the opinion of the county superintendent that proposed expenditures will exceed anticipated revenues, including prior year ending balances, as described in paragraph (1) of subdivision (e), or that specific technical corrections as described in paragraph (2) of subdivision (e) should be made, he or she shall, by November 1, transmit to the governing board, in writing, his or her recommendations and the reasons therefor.

(g) The superintendent and district governing board shall, by November 30, do all of the following:

(1) Review the recommendations of the county superintendent of schools at a regularly scheduled meeting of the governing board.

(2) Respond to the recommendations of the county superintendent. The response shall include the proposed actions to be taken, if any, as a result of the county superintendent's recommendations.

(h) On or before November 30, the county superintendent of schools shall transmit a copy of each district's adopted final budget to the county auditor. Further, he or she shall transmit to the Superintendent of Public Instruction a copy of each district's adopted final budget, if he or she provided the district governing board recommendations deemed to be significant and the governing board did not take actions he or she deemed appropriate. Accompanying these budgets shall be a copy of the county superintendent's recommendations and the school district's response to those recommendations as prescribed by paragraph (2) of subdivision (g).

SEC. 20. Section 42239 of the Education Code is amended to read:

42239. For the 1984–85 fiscal year and each fiscal year thereafter, the county superintendent shall compute an amount for each school district's summer school attendance in the following manner:

(a) Divide the amount received on account of average daily attendance pursuant to Section 42238.6 in the 1983–84 fiscal year by the 1983–84 fiscal year hours of attendance. This amount shall be increased annually by the percentage increase granted to school districts for base revenue limit increases.

(b) Multiply the amount computed in subdivision (a) by the lesser of the 1983–84 fiscal year hours of summer school attendance or the actual fiscal year hours of summer school attendance computed pursuant to paragraph (1) of subdivision (d).

(c) If the fiscal year hours of summer school attendance computed pursuant to subdivision (d) exceed the hours of summer school attendance specified in subdivision (b), multiply the increased hours by one dollar and fifty cents ($1.50). This amount shall be increased annually by the percentage increase granted to school districts for base revenue limit increases.

(d) Commencing in the 1984–85 fiscal year, summer school attendance shall be the sum of paragraphs (1) and (2):

(1) The hours of attendance in the categories identified in Section 42238.6 as it read in the 1983–84 fiscal year.

(2) Any summer school hours of attendance for mathematics, science, or other core academic areas designated by the Superintendent of Public Instruction.

(e) (1) A school district's maximum entitlement for reimbursement for pupil attendance in summer school programs offered pursuant to paragraph (2) of subdivision (d) shall be an amount equal to 5 percent of the district's total enrollment for the prior fiscal year times 120 hours, times the hourly rate for the current fiscal year determined pursuant to subdivision (c).

(2) A district may enroll more than 5 percent of its students, or may enroll students for more than 120 hours per year in summer school programs offered pursuant to paragraph (2) of subdivision (d), as long as the total state apportionment to the district for those programs does not exceed the amount computed pursuant to paragraph (1). A district shall earn its entitlement at the per pupil hourly rate pursuant to subdivision (c).

(f) Notwithstanding any other provision of law, classes may be convened pursuant to this section at the hours and for the length of time during the schoolday, and at the period and for the length of time during the school year, as may be determined by the governing board of the school district.

SEC. 21. Section 42600 of the Education Code is amended to read:

42600. The total amount budgeted as the proposed expenditure of the school district for each major classification of school district expenditures listed in the school district budget forms prescribed by the Superintendent of Public Instruction shall be the maximum amount which may be expended for that classification of expenditures for the school year. Transfers may be made from the designated fund balance or the unappropriated fund balance to any expenditure classification or between expenditure classifications at

any time by written resolution of the board of education of any school district governed by a board of education, when filed with the county superintendent of schools and the county auditor, or by written resolution of the board of trustees of any school district not governed by a board of education, when approved by the county superintendent of schools and filed with the county auditor. A resolution providing for the transfers specified in this section shall be approved by a majority vote of the members of the governing board. Nothing in this section shall be construed as affecting Sections 42204 and 85112.

SEC. 22. Section 42601 of the Education Code is amended to read:

42601. At the close of any school year a school district may, with the approval of the governing board, identify and request the county superintendent of schools to make the transfers between the designated fund balance or the unappropriated fund balance and any expenditure classification or classifications, or balance any expenditure classifications of the budget of the district for that school year as necessary to permit the payment of obligations of the district incurred during that school year. For those school districts with an average daily attendance of 2,500 or less, the county superintendent of schools, with the consent of the governing board of the school district, may identify and make the transfers.

SEC. 23. Section 42602 of the Education Code is amended to read:

42602. Notwithstanding the provisions of Sections 42600 and 42610 or any provision of this code to the contrary, the governing board of any school district may, by a majority vote of its membership, and with the approval of the county superintendent of schools, budget and use any unbudgeted income provided during the fiscal year from any source.

SEC. 24. Section 42610 of the Education Code is amended to read:

42610. Any amounts added to the general reserve of the school district in excess of the amount already budgeted shall not be available for appropriation by the school district for the current fiscal year except by the following procedure. The governing board of the school district shall, by formal action of the board, pass a resolution setting forth the need according to major classification of school district expenditures to be met from any portion of the general reserve derived from assured income in excess of the total amount anticipated in the budget. The resolution shall be submitted to the county superintendent of schools.

The county superintendent of schools shall approve any resolution for the appropriation of income to the extent that the income was not anticipated in the budget of the school district.

On the first day of July of each year, the general reserve together with unexpended balances of appropriations and income in excess of anticipated income for the preceding fiscal year shall be placed to the credit of the school district, and the school district shall include all money so credited in the balance shown in the budget for the ensuing fiscal year.

SEC. 25. Section 42810 of the Education Code is amended to read:

42810. In addition to establishing or maintaining a revolving cash fund under the provisions of Article 1 (commencing with Section 42800) of this chapter, the governing board of any school district may, by resolution, establish revolving cash funds for use by school principals and other administrative officials designated by the governing board and acting in accordance with regulations prescribed by the governing board, for services or matériel and for the purposes specified in Section 45167. The resolution shall set forth the necessity for the revolving cash funds, the principals of schools and other administrative officials of the school district designated by the governing board, the purposes for which the revolving cash funds shall be made available, and the amount of the funds. No funds maintained in any revolving cash fund established pursuant to this section shall be available for the purposes of attempting to influence government decisions, entertainment, or any other purpose not related to classroom instruction. The total amount of the funds for each district shall not exceed 3 percent of the current year's instructional supply budget.

The governing board of any school district may establish a checking account for the revolving fund in one or more banks. The account shall be established in the custody of the principal or other administrative official designated by the governing board for whose use the revolving cash fund is created. The principal or administrative official in whose name the revolving cash fund is created shall be responsible for all expenditures therefrom, subject to regulations that the governing board prescribes. The governing board shall provide for an audit of the funds on a regular basis.

The revolving cash fund for supplies shall be subject to the bonding provisions of Section 42801.

SEC. 26. Section 42840 of the Education Code is amended to read:

42840. The governing board of a school district may provide for the accumulation over a period of school years of funds for capital outlay purposes and salaries of school district employees whose work is directly related to projects financed by those funds, derived from the receipt of taxes levied for the district and from other sources including balances, and not required to be used for other than capital outlay purposes.

The governing board of a school district may also provide for the accumulation over a period of school years of funds for other than capital outlay purposes, derived from the receipt of taxes levied for the district and from other sources including balances, and not required to be used for capital outlay purposes.

SEC. 27. Section 42842 of the Education Code is amended to read:

42842. The governing board may expend the money in the special reserve fund for capital outlay for the purpose or purposes specified in any resolution filed pursuant to Section 42841 unless the purpose has been withdrawn pursuant to that section. In addition, unless actually encumbered for ongoing expenses, the governing

board may expend the money in the fund for the general operating purposes of the district.

The governing board of a school district may expend the money in the special reserve fund for other than capital outlay in accordance with this section.

SEC. 29. Section 46013.7 of the Education Code is amended to read:

46013.7. The Superintendent of Public Instruction may authorize 30 schools in 28 school districts to continue to use the attendance accounting and reporting procedures prescribed by Section 46013 for the 1985–86 school year through the 1993–94 school year, and shall not require these districts to keep parallel attendance accounting and reporting procedures as required under existing laws otherwise applicable. Subsequent to the 1982–83 fiscal year, no school district shall be eligible to receive a revenue limit increase pursuant to Section 46013.

SEC. 30. Section 46013.9 of the Education Code is repealed.

SEC. 31. Section 48206.3 of the Education Code is amended to read:

48206.3. (a) Except for those pupils receiving individual instruction provided pursuant to Section 48206.5, a pupil with a temporary disability which makes attendance in the regular day classes or alternative education program in which the pupil is enrolled impossible or inadvisable shall receive individual instruction provided by the district in which the pupil is deemed to reside.

(b) For purposes of this section and Sections 48206.5, 48207, and 48208, the following terms have the following meanings:

(1) "Individual instruction" means instruction provided to an individual pupil in a hospital or other residential health facility, excluding state hospitals, the pupil's home, or under other circumstances prescribed by regulations adopted for that purpose by the State Board of Education.

(2) "Temporary disability" means a physical, mental, or emotional disability incurred while a pupil is enrolled in regular day classes or an alternative education program, and after which the pupil can reasonably be expected to return to regular day classes or the alternative education program without special intervention. A temporary disability shall not include a disability for which a pupil is identified as an individual with exceptional needs pursuant to Section 56026.

(c) (1) For purposes of computing average daily attendance pursuant to Section 42238.5, each clock hour of teaching time devoted to individual instruction shall count as one day of attendance.

(2) No pupil shall be credited with more than five days of attendance per calendar week, or more than the total number of calendar days that regular classes are maintained by the district in any fiscal year.

(d) Notice of the availability of individualized instruction shall be given pursuant to Section 48980.

SEC. 32. Section 52321 of the Education Code is amended to read:

52321. (a) A regional occupational center or program established and maintained by school districts or joint powers agencies pursuant to Section 52301 shall receive in annual operating funds from each of the participating school districts an amount per unit of average daily attendance equal to the revenue limit received by those districts for each unit of average daily attendance generated in the regional occupational center or program.

A regional occupational center or program established and maintained by a county superintendent of schools pursuant to Section 52301 shall receive funding pursuant to Section 2550. A county superintendent of schools shall report average daily attendance to the Superintendent of Public Instruction for that funding.

(b) Any regional occupational center or program is authorized to (1) budget and accumulate an amount necessary to meet the cash flow needs of the regional occupational center or program known as a general reserve, and (2) budget and accumulate amounts known as the designated fund balance and as the unappropriated fund balance; or, for regional occupational centers or programs established and maintained by school districts or joint powers agencies, to budget an amount necessary to meet long-term program needs of the regional occupational center or program known as capital outlay expenditures or equipment replacement. At the end of any given school year, subject to the exception provided in paragraph (2) of subdivision (c), the net ending balance may be distributed to any of the reserved accounts, provided that the combined total transferred does not exceed 15 percent of the previous year's expenditures.

(1) The general reserve, the designated fund balance, the unappropriated fund balance, and the capital outlay expenditures or equipment replacement reserved account shall be available for appropriation only after approval by a majority vote of the governing body of the regional occupational center or program.

(2) Funds of regional occupational centers or programs established and maintained by school districts or joint powers agencies shall be distributed to the capital outlay expenditures or equipment replacement reserve account only upon adoption by the governing board of a resolution specifying the general use to which each appropriation from the account would be put.

(c) (1) With the exception of the 1988–89 fiscal year, at the end of any given school year the combined net ending balances of the general reserve, the designated fund balance, and the unappropriated fund balance in excess of 15 percent of the previous fiscal year's expenditures shall be returned to the districts participating in the regional occupational center or program in proportion to the district's contribution to the regional occupational

center or program. The county superintendent of schools shall reduce the revenue limit of the districts by an amount equal to the excess reserves which are required to be returned to the districts. Net ending balances in excess of 15 percent, except those funds specifically set aside by the board and restricted to capital outlay expenditures or equipment replacement, in county-operated regional occupational centers or programs shall reduce the revenue limit of the county superintendent program by an amount equal to the excess reserves in that program. For the 1988–89 fiscal year only, the 1987–88 fiscal year net ending balance for the regional occupational center or program shall be carried forward to the 1988–89 fiscal year with no limit applied if the ending balance in excess of 15 percent of the amount expended in the prior year was the result of accrual policies of the California School Accounting Manual.

(2) A regional occupational center or program established and maintained by school districts or joint powers agencies may accumulate over a period of two or more given school years, a net ending balance in the capital outlay expenditures or equipment replacement reserved account of more than 15 percent of the previous fiscal year's expenditures, under provisions of a resolution of the governing board pursuant to paragraph (2) of subdivision (b).

(d) With the exception of ending balances governed by provisions of Section 2558.5, funds placed in either the general reserve, the designated fund balance, the unappropriated fund balance, or the capital outlay or equipment replacement accounts, shall only be expended for regional occupational center or program educational purposes.

SEC. 33. Section 52501.5 of the Education Code is amended to read:

52501.5. (a) Except as provided in subdivision (b), no revenue derived from the average daily attendance of adult education programs shall be expended for other than adult education purposes, nor shall revenue derived from other average daily attendance be expended for adult education purposes.

(b) When a district's adult revenue limit as allowed by Section 43001 is composed of average daily attendance from both a regional occupational center or program and an adult education program, the adult revenue limit income may be allocated to each program in a proportion other than the amount of adult revenue limit per average daily attendance otherwise allocable thereto.

(c) Beginning with the 1976–77 fiscal year, any high school or unified school district may (1) budget and accumulate an amount necessary to meet the cash flow needs of the adult education program, known as a "general reserve," not to exceed 10 percent of the previous year's expenditures for the operation of the adult education program, and (2) budget and accumulate amounts known as the designated fund balance and as the unappropriated fund balance. These amounts are intended to provide for unforeseen

requirements and shall be available for appropriation only after approval by a two-thirds vote of the governing body, and limited to 5 percent of the previous fiscal year's expenditures for the operation of the adult education program.

With the exception of the 1988–89 fiscal year, net ending balances in excess of 15 percent of the amount expended in the prior year shall be deemed to be excessive regardless of the year accumulated. The county superintendent of schools shall subtract from the district's total revenue limit an amount equal to the excess reserves in the adult education fund. For the 1988–89 fiscal year only, the 1987–88 fiscal year net ending balance for the district adult education fund shall be carried forward to the 1988–89 fiscal year with no limit applied if the ending balance in excess of 15 percent of the amount expended in the prior year was the result of accrual policies of the California School Accounting Manual.

SEC. 34. Section 54444.2 of the Education Code is amended to read:

54444.2. (a) The Superintendent of Public Instruction shall take the steps necessary to assure effective parental involvement throughout the state migrant education program, which shall include, but need not be limited to, the following:

(1) The superintendent shall adopt rules and regulations requiring each operating agency receiving migrant education funds or services to actively solicit parental involvement in the planning, operation, and evaluation of its programs through the establishment of, and consultation with, a parent advisory council.

The membership of each parent advisory council shall be comprised of members who are knowledgeable of the needs of migrant children and shall be elected by the parents of migrant children enrolled in the operating agency's programs. The composition of the council shall be determined by the parents at a general meeting to which all parents of pupils enrolled in the migrant program shall be invited. Parents shall be informed, in a language they understand, that the parents have the sole authority to decide on the composition of the council. All parent candidates for the council shall be nominated by parents; nonparent candidates shall be nominated by the groups they represent (i.e., teachers by teachers, administrators by administrators, other school personnel by other school personnel, and pupils by pupils). All other community candidates shall be nominated by the parents. Each parent advisory council shall hold meetings on a regular basis during the operation of the regular program, but not less than six times during the year.

At least two-thirds of the members of each parent advisory council shall be the parents of migrant children. Each parent advisory council shall have the responsibilities listed in subdivision (a) of Section 54444.4.

(2) The superintendent shall establish a statewide parent advisory council which shall participate in the planning, operation, and evaluation of the state migrant education program. The membership

of the statewide parent advisory council shall be comprised of members who are knowledgeable of the needs of migrant children and shall be nominated and elected by the parents of migrant children enrolled in the operating agencies. At least two-thirds of the members of the State Parent Advisory Council shall be the parents of migrant children. The state council shall meet a minimum of six times a calendar year to provide input on issues relating to the operation of the program. Special meetings may be called at the discretion of the state director.

The superintendent shall also sponsor an annual State Parent Advisory Council Conference. The conference shall be scheduled during the spring of every year. Within 120 days from the conclusion of the conference, the State Parent Advisory Council shall prepare and submit a report to the Legislature, State Board of Education, the superintendent, and the Governor regarding the status of the migrant education program.

(3) The superintendent and each operating agency shall furnish, without charge, to the statewide and operating agency parent advisory councils and, upon request, to each member, a copy of all applicable state and federal migrant education statutes, rules and regulations, and guidelines. In addition, the superintendent and each operating agency shall furnish, without charge, to the statewide and operating agency parent advisory councils and, upon request, to each member, copies of all applicable state and federal audits, monitoring reports, and evaluations.

(4) The superintendent and each operating agency shall establish and implement training programs for members of the statewide and operating agency parent advisory councils to enable them to carry out their responsibilities. Each training program shall be developed in consultation with the parent advisory councils and shall include appropriate training materials in a language understandable to each member. Costs incurred in providing training under this paragraph, including federally authorized expenses associated with the attendance of members at training sessions, shall be funded, to the extent that funds are available, by federal funds allocated to the state, based upon the educational and related health needs of migratory children defined in subdivisions (a) and (b) of Section 54441, and may be supported by funds from the state migrant education program.

(b) Each operating agency which provides services on a statewide basis shall be exempt from the requirement that it create its own parent advisory council, but shall consult the statewide parent advisory council in the planning, operation, and evaluation of its programs.

SEC. 35. Section 56827 of the Education Code is amended to read:

56827. The Superintendent of Public Instruction shall review the information and calculations submitted by districts and county offices in support of all apportionment computations described in this chapter. The review shall be conducted on the data submitted

during the initial year of apportionment and for the three succeeding fiscal years only. Adjustments to any year's apportionment shall be received by the superintendent from the district or county office prior to the end of the third fiscal year following the fiscal year to be adjusted. The superintendent shall consider and adjust only the information and computational factors originally established during an eligible fiscal year, if the superintendent's review determines that they are correct.

SEC. 36. Section 19994.9 of the Government Code is amended and renumbered to read:

19050.8. The board may prescribe rules governing the temporary assignment or loan of employees within an agency or between agencies or jurisdictions for not to exceed two years for any of the following purposes:

(a) To provide training to employees.

(b) To enable an agency to obtain expertise needed to meet a compelling program or management need.

(c) To facilitate the return of injured employees to work.

These temporary assignments or loans shall be deemed to be in accord with this part limiting employees to duties consistent with their class and may be used to meet minimum requirements for promotional as well as open examinations. An employee participating in that arrangement shall have the absolute right to return to his or her former position. Any temporary assignment or loan of an employee made for the purpose specified in subdivision (b) shall be made only with the voluntary consent of the employee.

In addition, out-of-class experience obtained in a manner not described in this section may be used to meet minimum requirements for promotional as well as open examinations, only if it was obtained by the employee in good faith and was properly verified under standards prescribed by board rule.

For purposes of this section, a temporary assignment or loan between educational agencies or jurisdictions, or both, shall be extended for up to two additional years upon a finding by the Superintendent of Public Instruction or the Chancellor of the California Community Colleges, and with the approval of the Executive Officer of the State Personnel Board, that the extension is necessary in order to substantially complete work on an educational improvement project. Public and private colleges and universities shall be considered educational jurisdictions within the meaning of this section.

SEC. 37. Item 6100-101-001 of Section 2.00 of the Budget Act of 1987 is amended to read:

6100-101-001—For local assistance, Department of Education, for transfer to Section A of the State School Fund, Program 10.10—School Apportionments..... 8,076,717,000

Schedule:

(a) Program 10.10.001.001—School

Apportionments, District Revenue Limit, for the purposes of Section 42238 of the Education Code 7,955,144,000

(b) Program 10.10.001.002—School Apportionments, for Necessary Small Schools, in addition to the amount appropriated in category (a) of this item, for the purposes of subdivision (f) of Section 42238 of the Education Code 15,407,000

(d) Program 10.10.001.004—School Apportionments, for Meals for Needy Pupils programs, for the purposes of Article 10.5 (commencing with Section 49550) of Chapter 9 of Part 27 of the Education Code 26,767,000

(e) Program 10.10.001.005—School Apportionments, for apprentice programs, for the purposes of Section 8153 of the Education Code 6,878,000

(f) Program 10.10.011—School Apportionments, for summer school programs, for the purposes of Section 42239 of the Education Code..... 72,521,000

Provisions:

1. Funds appropriated by this item are for transfer by the State Controller to Section A of the State School Fund, in lieu of the amount which would otherwise be appropriated for transfer from the General Fund in the State Treasury to Section A of the State School Fund for the 1987–88 fiscal year pursuant to Sections 14002, 14004, and 41301 of the Education Code, an amount as needed, in addition to sums accruing to Section A of the State School Fund from other sources for the purposes specified herein, for apportionment pursuant to Section 8153, Section 42238, Section 42239, and Sections 42240 and 42240.1 of the Education Code.
2. Notwithstanding Section 8154 of the Education Code, or any other provision of law, the funds specified in Schedule (e) of this item shall be the only funds available for and allocated by the Superintendent of Public Instruction for the apprentice programs operated by school districts and county offices of education.
3. Notwithstanding Section 8152 of the Education Code, each 60-minute hour of teaching time de-

voted to each indentured apprentice enrolled in and attending classes of related and supplemental instruction as provided under Section 3074 of the Labor Code shall be reimbursed at the rate of $3.76 per hour. For purposes of this division, each hour of teaching time may include up to 10 minutes for passing time and breaks.

4. (a) No school district or county office of education shall use funds available under Schedule (e) to offer any new or expanded apprentice program(s) unless that program(s) has been approved by the Superintendent of Public Instruction.

(b) Upon the approval of the Superintendent of Public Instruction, school districts and county offices of education may use funds available under Schedule (e) for an apprentice program that is transferred to the school district from a community college district in 1987–88.

(c) For any apprentice program offered pursuant to Section 8152 or Section 8153 of the Education Code that is transferred from a K-12 school district or a county office of education to a community college district in 1987–88, the Controller, upon certification by the Superintendent of Public Instruction, shall transfer, prior to the first or second principal apportionment, as appropriate, from Schedule (e) of this item to Schedule (a) of Item 6870-101-001 an amount equal to the number of hours for which the apprentice program received funding in 1986–87 times $3.76.

(d) The Director of Finance may approve any transfer authorized by this provision, provided that such transfer may not be authorized sooner than 30 days after the notification in writing of the necessity therefor to the chairperson of the committee in each house which considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the chairperson of the joint committee, or his or her designee, may in each instance determine.

5. The Superintendent of Public Instruction shall report to the Department of Finance and the Legislature no later than October 1, 1987, on the

amount of funds expended for and the hours of related and supplemental instruction offered in the apprentice program during the 1986–87 fiscal year, with information to be provided by school district, county office of education, program sponsor, and trade. Expenditure information shall distinguish between direct and indirect costs, including administrative costs funded for the Department of Education, school districts, county offices of education, and program sponsors. In addition, the report shall identify the hours of related and supplemental instruction proposed for the 1987–88 and 1988–89 fiscal years by school district, county office of education, program sponsor, and trade. As a condition of receiving funds for the apprenticeship program, K-12 school districts shall report to the Superintendent of Public Instruction the information necessary for the completion of this report.

6.3. Notwithstanding any other provision of law, the county superintendent shall reduce the total revenue limit computed pursuant to Section 42238 of the Education Code by the amount of the decreased employer contributions to the Public Employees' Retirement System resulting from the enactment of Chapter 330 of the Statutes of 1982, adjusted for any changes in those contributions resulting from subsequent changes in employer contribution rates through the 1987–88 fiscal year.

The reduction shall be calculated as follows:

(a) Determine the amount of employer contributions which would have been made in the 1987–88 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately prior to the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1987–88 fiscal year. For the purposes of this calculation, no school district shall have a contribution rate higher than 13.020 percent.

(b) Subtract from the amount determined in subdivision (a) the actual amount of employer contributions made to the Public Employees' Retirement System in the 1987–88 fiscal year.

(c) For the purposes of this provision, employ-

er contributions to the Public Employees' Retirement System for any of the following positions shall be excluded from the calculation specified above:

(1) Positions supported totally by federal funds which are subject to supplanting restrictions.

(2) Positions supported by funds received pursuant to Section 42243.6 of the Education Code.

(3) Positions supported, to the extent of employer contributions not exceeding $25,000 by any single educational agency, from a revenue source determined on the basis of equity to be properly excludable from this subdivision by the Superintendent of Public Instruction with the approval of the Director of Finance.

(d) For accounting purposes, the reduction made by this provision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

7. Notwithstanding Subdivision (e) of Section 42239 of the Education Code, for the 1987–88 fiscal year, the Superintendent of Public Instruction shall allocate a minimum of $5,300 for supplemental summer school programs in those districts whose prior year enrollment was less than 500 and that, in the 1987–88 fiscal year, offer at least 1,500 hours of supplemental summer school instruction. A small school district as defined above, that offers less than 1,500 hours of supplemental summer school offerings shall receive a proportionate reduction in its allocation. For the purpose of this provision, supplemental summer school programs shall be defined as programs authorized under paragraph (2) of subdivision (d) of Section 42239 of the Education Code.

9. Of the funds appropriated in this item, the Superintendent of Public Instruction is authorized to pay the United States Department of Education an amount not to exceed $586,535 in partial settlement of the final audit determination identified as ACN 09-60002, Education Appeal Board Docket No. 9-(55)-79. The State Department of Education shall reduce the reve-

nue limit apportionment amount otherwise to be provided to the school district identified in the audit by the amount owing. The amount which is repaid to the state under the provisions of Section 456 of the General Education Provisions Act (20 U.S.C. 1234e) shall be apportioned to this district in accordance with the settlement agreement entered among the district, the State Department of Education, and the United States Department of Education.

10.5. (a) Notwithstanding Section 42239 of the Education Code, or any other provision of law, the Superintendent of Public Instruction shall reallocate to high school districts any unexpended balance of the appropriations made for the 1987–88 fiscal year for reimbursement for actual pupil attendance in summer school programs authorized under paragraph (2) of subdivision (d) of Section 42239 of the Education Code that exceeds the maximum attendance for which reimbursement is available under subdivision (e) of Section 42239 of the Education Code. In no event shall any high school district receive reimbursement for pupil attendance in summer school programs in a total amount exceeding 7 percent of the high school district's total enrollment for the prior fiscal year times 120 hours, times the hourly rate for the current fiscal year determined pursuant to subdivision (c) of Section 42239 of the Education Code.

(b) Commencing in 1988–89, a school district's maximum entitlement for pupil attendance in summer school programs offered pursuant to paragraph (2) of subdivision (d) of Section 42239 of the Education Code shall be as follows:

(1) For elementary school districts, an amount equal to 4 percent of the district's enrollment for the prior fiscal year, times 120 hours, times the hourly rate for the 1988–89 fiscal year determined pursuant to subdivision (c) of Section 42239 of the Education Code.

(2) For high school districts, an amount equal to 7 percent of the district's enrollment for the prior fiscal year, times 120 hours, times the hourly rate for the

1988–89 fiscal year determined pursuant to subdivision (c) of Section 42239 of the Education Code.

(3) For unified school districts, an amount equal to 5 percent of the district's enrollment for the prior fiscal year, times 120 hours, times the hourly rate for the 1988–89 fiscal year determined pursuant to subdivision (c) of Section 42239 of the Education Code.

It is the intent of the Legislature that the total appropriation provided for summer school programs offered pursuant to paragraph (2) of subdivision (d) of Section 42239 of the Education Code for the 1988–89 fiscal year be based upon 5 percent of prior-year statewide enrollment, times 120 hours, times the hourly rate for the 1988–89 fiscal year determined pursuant to subdivision (c) of Section 42239 of the Education Code.

13. Notwithstanding Article 8 (commencing with Section 8150) of Chapter 1 of Part 6 of the Education Code, or any other provision of law, the total number of hours eligible for reimbursement in apprentice programs operated by K-12 school districts and county offices of education shall be limited to an amount equal to the total appropriation specified in Schedule (e) of this item divided by the hourly rate specified in Provision 3 and as adjusted by Provision 4(b). The Superintendent of Public Instruction shall have the authority to determine which apprentice programs, and which hours offered in such programs, are eligible for reimbursement.

14. Notwithstanding any other provision of law, for the purpose of calculating entitlements for revenue limit apportionments, the Superintendent of Public Instruction shall increase the number of units of average daily attendance (ADA) for the Victor Valley Union High School District by 300 units in the 1987–88 fiscal year only. In each of the fiscal years 1988–89 through 1992-93, the superintendent shall reduce the district's number of units of ADA by 60 units below the level that the district would otherwise be entitled to claim. It is the intent of the Legislature to assist the district in overcoming the severe impacts on its cash flow of a reorganization election which reduced the district's ADA by 70

percent for the 1987–88 fiscal year. It is further the intent of the Legislature that such assistance be provided at no net cost to the state.

15. If a final court decision is issued prior to June 30, 1988, declaring null and void the November 4, 1986, election which created the Apple Valley Unified, Hesperia Unified, and Lucerne Valley Unified school districts, Provision 14 of this item shall be inoperative.

SEC. 37.5. Section 4 of Chapter 1258 of the Statutes of 1986 is amended to read:

Sec. 4. As a condition on the receipt by the Berkeley Unified School District of any emergency apportionment funds pursuant to Section 3, in addition to complying with Article 2 (commencing with Section 41320) of Chapter 3 of the Education Code, all of the following conditions shall apply:

(a) The Superintendent of Public Instruction shall appoint a trustee having recognized expertise in education, management, and finance, and who shall be bonded. The costs of the trustee and of the bonding shall be borne by the district. The Superintendent of Public Instruction shall establish the terms and conditions of employment, and the remuneration of, the trustee, who shall serve at the pleasure of, and report directly to, the superintendent. The trustee shall be discharged at the time the total apportionment made under Section 3 of this act is repaid, including interest.

(b) The trustee shall monitor and review the operation of the district. During the period of his or her service, the trustee may stay or rescind any action of the school district governing board that, in the judgment of the trustee, may affect the financial condition of the district. The trustee shall approve or reject all reports and other materials required from the district pursuant to Article 2 (commencing with Section 41320) of Chapter 3 of the Education Code. The Superintendent of Public Instruction, upon the recommendation of the trustee, may reduce any apportionment to the district in an amount of up to one thousand dollars ($1,000) per day for each late or unacceptable report or other material required under Part 24 (commencing with Section 41000) of the Education Code, and shall report to the Legislature any failure of the district to comply with the requirements of this section.

(c) For the 1986–87 fiscal year and each fiscal year thereafter, the Controller shall conduct an audit of the books and accounts of the district, as provided by Section 41020 of the Education Code. Any audit conducted under this subdivision for the preceding fiscal year shall be deemed by the Superintendent of Public Instruction to fulfill the requirement for an audit for that fiscal year described in Section 41020 of the Education Code. The costs of these services shall be borne by the district, in an amount not to exceed the salary expense of two temporary full-time employees assigned to this purpose. The

Department of Finance shall approve the addition of two temporary full-time positions funded through reimbursement by the local school district for the purpose of completing these audits. These audits shall be required until the Controller determines, in consultation with the Superintendent of Public Instruction, that the district has not deviated from the financial plan approved under Section 41320 of the Education Code and that the district is financially solvent, but in no event earlier than one year following the implementation of the plan or later than the time the apportionment made under Section 3 is repaid, including interest. The Controller may use the services of private certified public accountants currently on contract with the Berkeley Unified School District to assist in the performance of these audits. Any audit assistance used by the Controller from those certified public accountants shall be under the control and at the expense of the Controller.

(d) The county superintendent of schools in which the district is situated shall provide any information and other assistance that the Superintendent of Public Instruction may require in this respect until the apportionment made under Section 3 is repaid, including interest.

(e) The district shall develop and the State Superintendent of Public Instruction shall approve an educational plan, which includes, but is not necessarily limited to, details on how educational programs, personnel, facilities, and other programs will be affected by each fiscal plan.

SEC. 38. Section 16.5 of this bill incorporates amendments to Section 42122 of the Education Code proposed by both this bill and SB 813. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 42122 of the Education Code, and (3) this bill is enacted after SB 813, in which case Section 16 of this bill shall not become operative.

SEC. 39. (a) The Guadalupe Union School District shall use the 1981–82 fiscal year as the base year for calculating its longer school year, longer schoolday entitlements pursuant to Sections 46201 and 46202 of the Education Code.

(b) Due to the unique circumstances concerning the Guadalupe Union School District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 40. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 41. No reimbursement is required by Section 37 of this act

pursuant to Section 6 of Article XIII B of the California Constitution because that section is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in that section.

CHAPTER 918

An act to add and repeal Section 14913 of the Government Code, and to amend Sections 18681.1, 18802, and 19286.8 of, and to add Sections 18408.5, 18810, 25106.5, 25906, and 26132.3 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 21, 1987 Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 14913 is added to the Government Code, to read:

14913. (a) Consistent with the policy expressed in Section 14900, all libraries throughout the state shall continue to make California income tax forms freely available to the state's inhabitants.

(b) The Legislative Analyst shall conduct a study of the use of libraries as distribution centers for California tax forms and report to the Legislature on or before January 1, 1990, regarding all of the following:

(1) The effectiveness and efficiency of libraries as distribution centers.

(2) The burden imposed on libraries by the distribution program.

(3) If the distribution program is found to be effective and efficient, the necessity, if any, for libraries to receive additional funding for continuation of the program.

(c) This section shall become inoperative on July 1, 1991, and, as of January 1, 1992, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1992, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 18408.5 is added to the Revenue and Taxation Code, to read:

18408.5. In lieu of filing a return pursuant to Section 18401 or 18405.5, the Franchise Tax Board may, pursuant to requirements and conditions set forth in forms and instructions, provide for the filing of a group return for electing nonresident partners by a partnership doing business in, or deriving income from, sources in California. The tax rate or rates applicable to each electing partner's distributive share shall be the highest marginal rate or rates provided by this part. No deductions shall be allowed except those necessary to determine each partner's distributive share, and no credits shall be allowed except those directly attributable to the partnership. As required by

the Franchise Tax Board, the partnership as agent for the electing partners shall make the payments of tax, additions to tax, interest, and penalties otherwise required to be paid by the electing partners.

SEC. 3. Section 18681.1 of the Revenue and Taxation Code is amended to read:

18681.1. (a) In the case of each failure—

(1) To file a statement of the amount of payments to another person required by—

(A) Subdivision (a) of Section 18802 (relating to information at source),

(B) Subdivision (a) of Section 18802.8 (relating to reporting requirements of certain fishing boat operators), or

(2) To make a return required by—

(A) Subdivision (a) of Section 18802.3 (relating to information reporting requirements for real property owners),

(B) Section 18802.4 (relating to information reporting requirements for brokers and barterers),

(C) Subdivision (a) of Section 18802.5 (relating to reporting payment of wages in the form of group-term life insurance),

(D) Subdivision (a) of Section 18802.6 (relating to copies of federal information returns),

(E) Section 18803 (relating to information reporting requirements for income from securities), on the date prescribed therefor (determined with regard to any extension of time for filing),

unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Franchise Tax Board and in the same manner as the tax), by the person failing to file a statement referred to in paragraph (1) or failing to make a return referred to in paragraph (2), fifty dollars ($50) for each such failure, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed ten thousand dollars ($10,000).

(b) In the case of each failure to file a return of the amount of payments to another person required by subdivision (a) of Section 18802.1 (relating to payments of patronage dividends), on the date prescribed therefor (determined with regard to any extension of time for filing), there shall be paid by the person failing to file such statement a penalty of fifty dollars ($50) for each such failure unless it is shown that such person exercised due diligence in attempting to satisfy the requirement with respect to that statement.

(c) Article 2 (commencing with Section 18581) of Chapter 18 of this part (relating to deficiency assessments) shall not apply with respect to the assessment or collection of any penalty imposed by this section.

(d) If one or more failures to which subdivision (a) or (b) applies are due to intentional disregard of the filing requirement, then with respect to those failures—

(1) The penalty imposed under subdivision (a) shall not be less

than an amount equal to—

(A) In the case of a return not described in subparagraph (B) or (C), 10 percent of the aggregate amount of the items required to be reported,

(B) In the case of a return required to be filed by Section 18802.4, 5 percent of the gross proceeds required to be reported,

(C) In the case of a return required to be filed under paragraph (1), (2), or (3) of subdivision (a) of Section 18802.6, one hundred dollars ($100) for each such failure, and

(2) The ten thousand dollar ($10,000) limitation under subdivision (a) shall not apply.

(e) In the case of each failure to provide a written explanation as required by Section 402(f) of the Internal Revenue Code (as incorporated by Section 17501), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Franchise Tax Board and in the same manner as tax, by the person failing to provide that written explanation, an amount equal to ten dollars ($10) for each such failure, but the total amount imposed on that person for all those failures during any calendar year shall not exceed five thousand dollars ($5,000).

SEC. 4. Section 18802 of the Revenue and Taxation Code is amended to read:

18802. (a) Every individual, partnership, corporation, joint stock company or association, insurance company, business trust, or so-called Massachusetts trust, engaged in a trade or business in this state and making payment in the course of such trade or business to another person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state or any political subdivision of this state, or any city organized under a freeholder's charter, or any political body not a subdivision or agency of the state, having the control, receipt, custody, disposal, or payment of interest (other than interest coupons payable to bearer), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income amounting to six hundred dollars ($600) or over, paid or payable during any year to any taxpayer, shall make a complete return to the Franchise Tax Board, which shall contain or be verified by a written declaration that it is made under the penalties of perjury, under such regulations and in such form and manner and to such extent as may be prescribed by it.

(b) For purposes of subdivision (a), the term "trade or business" includes the activities of nonprofit organizations.

(c) In lieu of an information return required by subdivision (a), the Franchise Tax Board may require that a copy of the federal information return be filed with the Franchise Tax Board.

(d) Every entity making a return under subdivision (a) shall furnish to each person whose name is set forth in the return a written

statement showing—

(1) The name, address, and identification number of the entity making the return, and

(2) The aggregate amount of payments to the person shown on the return.

The written statement required under this subdivision shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subdivision (a) was made.

(e) This section shall not apply to tips with respect to which Section 13055 of the Unemployment Insurance Code applies. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts and copies of statements furnished by employees under Section 13055 of the Unemployment Insurance Code. This subdivision shall apply to payments made after December 31, 1978.

(f) The amendments to this section made by the 1981–82 Regular Session of the Legislature shall apply to returns and statements required to be furnished after December 31, 1981.

SEC. 5. Section 18810 is added to the Revenue and Taxation Code, to read:

18810. The Franchise Tax Board may require employers to submit copies of income tax withholding exemption certificates. If the Franchise Tax Board determines that a certificate is invalid for state income tax purposes, the Franchise Tax Board shall notify the employer and the affected employee of its determination. An employee who disagrees with the Franchise Tax Board's determination may request review of the determination by filing a written petition in the form and within the time prescribed by the Franchise Tax Board. After review, the Franchise Tax Board shall give written notification of its decision to both the employer and the employee.

SEC. 6. Section 19286.8 of the Revenue and Taxation Code is amended to read:

19286.8. (a) Notwithstanding any other provision of law, each city which maintains a computerized recordkeeping system or has access to a computerized recordkeeping or information system and which assesses a business tax shall annually furnish to the Franchise Tax Board the information specified in subdivision (b) for all businesses subject to the tax in the preceding fiscal year.

(b) The information required shall include all of the following:

(1) Business name.

(2) Business address.

(3) Federal employer identification number (if the business is a partnership or corporation, or owner's name and social security number (for all others).

(4) Type of business activity.

(5) Amount of annual business tax.

(6) Any other information which the Franchise Tax Board may

require.

(c) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards prescribed by forms and instructions by the Franchise Tax Board.

(d) Cities shall begin providing to the Franchise Tax Board the information required by this section as soon as economically feasible, but no later than December 31, 1990. The information shall be furnished annually at a time and in the form which the Franchise Tax Board may prescribe by forms and instructions.

(e) (1) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the information furnished pursuant to this section shall not be deemed to be public records and shall not be open to the public for inspection.

(2) Any deputy, agent, clerk, officer, or employee of any entity described in subdivision (a), or any former officer or employee or other individual who in the course of his or her employment or duty has or had access to the information required to be furnished under this section, shall not disclose or make known in any manner that information, except to the Franchise Tax Board.

(f) It is the intent of the Legislature in enacting this section to utilize the social security account numbers or federal employer identification numbers for the sole purposes of establishing the identification of individuals affected by state tax laws and, to that end, the information furnished pursuant to this section shall be used exclusively for state tax enforcement purposes.

SEC. 7. Section 25106.5 is added to the Revenue and Taxation Code, to read:

25106.5. The Franchise Tax Board shall adopt regulations which it deems necessary to prevent avoidance of tax liability imposed under this part by any taxpayer which is or was a member of a group of taxpayers whose income and apportionment factors are or were required to be determined by a combined report. The regulations shall take into account one or more of the following: how tax liability may be returned, determined, computed, assessed, collected, or adjusted in such manner as to clearly reflect tax liability and the various elements necessary to determine tax liability.

SEC. 8. Section 25906 is added to the Revenue and Taxation Code, to read:

25906. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this article on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to that overpayment.

SEC. 9. Section 26132.3 is added to the Revenue and Taxation Code, to read:

26132.3. The Franchise Tax Board may require employers to submit copies of income tax withholding exemption certificates. If

the Franchise Tax Board determines that a certificate is invalid for state income tax purposes, the Franchise Tax Board shall notify the employer and the affected employee of its determination. An employee who disagrees with the Franchise Tax Board's determination may request review of the determination by filing a written petition in the form and within the time prescribed by the Franchise Tax Board. After review, the Franchise Tax Board shall give written notification of its decision to both the employer and the employee.

SEC. 10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 919

An act to add Sections 8478.5 and 8486.5 to the Education Code, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 8486.5 is added to the Education Code, to read:

8486.5. (a) Notwithstanding any other provision of law, a priority in funding of capital outlay grants or relocatables from funds allocated but unencumbered pursuant to Section 5 of Chapter 1026 of the Statutes of 1985, shall be given to any applicant or contracting agency providing, or seeking to provide, extended child care facilities in, or in close proximity to, public housing projects, or in areas of high density of recipients of benefits under the Aid to Families with Dependent Children program to serve participants under the Greater Avenues for Independence Act of 1985 (Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code).

(b) This section shall apply only to those funds remaining in the State Child Care Facilities Fund which have not, as of the effective date of this act, been encumbered for funding successful applicants, pursuant to Section 5 of Chapter 1026 of the Statutes of 1985.

SEC. 2. Section 8478.5 is added to the Education Code, to read:

8478.5. (a) Notwithstanding any other provision of law, a priority in funding of capital outlay grants or relocatables from funds allocated but unencumbered pursuant to Section 5 of Chapter 1026 of the Statutes of 1985, shall be given to any applicant or contracting agency providing, or seeking to provide, extended child care facilities in, or in close proximity to, public housing projects, or in areas of high density of recipients of benefits under the Aid to Families with Dependent Children program to serve participants under the Greater Avenues for Independence Act of 1985 (Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code).

(b) This section shall apply only to those funds remaining in the State Child Care Facilities Fund which have not, as of the effective date of this section, been encumbered for funding successful applicants, pursuant to Section 5 of Chapter 1026 of the Statutes of 1985.

SEC. 3. Section 1 of this act adds Section 8486.5 to the Education Code. SB 998, AB 1919, and AB 2628 of the 1987–88 Regular Session would amend and renumber Section 8486 to be Section 8478. If SB 998, AB 1919, or AB 2628, or any of those bills, are chaptered and become effective on or before January 1, 1988, and any of them amend and renumber Section 8486 to be Section 8478, irrespective of the order of chaptering, then Section 2 of this act shall become operative, and Section 1 of this act shall not become operative. If none of those bills are chaptered, or become effective on or before January 1, 1988, then Section 1 of this act shall become operative, and Section 2 of this act shall not become operative.

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 for needed facilities for the provision of child care services to be developed at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 920

An act to amend Section 18976 of the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1987 Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 18976 of the Welfare and Institutions Code is amended to read:

18976. A primary prevention program shall include all of the following:

(a) Parent, teacher, and children's workshops which provide all of the following:

(1) Information, provided in a clear, age-appropriate, nonthreatening manner, delineating the problem and the range of possible solutions.

(2) Workshops which are culturally and linguistically appropriate to the population served and which are staffed by people with cultural and linguistic backgrounds representing the diversity of the population in the service area.

(3) Workshops which are appropriate to the geographic area served.

(4) Workshops which are designed to help counteract common stereotypes about victims and offenders.

(b) Parent and school staff workshops presented prior to the presentation of children's workshops, which include information and training concerning all of the following:

(1) Physical and behavioral indicators of abuse.

(2) Postworkshop session techniques.

(3) Community resources.

(4) Rights and responsibilities regarding reporting.

(5) School district procedures to facilitate reporting and apprise supervisors and administrators of reports.

(6) Caring for a child's needs after a report is made.

(c) Children's workshops shall contain information and training concerning all of the following:

(1) The right of every child to live free of abuse.

(2) How to disclose incidents of abuse.

(3) The availability of support resources and how to obtain help.

(4) Child safety training and age-appropriate self-defense techniques.

(5) A period for postworkshop sessions in a school setting which maximizes the child's privacy and sense of safety and provide a period of time following each child's workshop, or a reasonable time thereafter, for any child who on a voluntary basis may want to individually talk with classroom presenters. Reports and referrals to appropriate child protective services agencies shall be made pursuant to state law. These sessions shall not provide any therapy or other forms of treatment.

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 clarify the law and prevent the disruption of child abuse training programs as soon as possible, it is essential that this act take effect immediately.

CHAPTER 921

An act to amend Sections 98.9, 722.5, 723.1, 755, and 756 of, to add Section 98.10 to, and to repeal Section 7062 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 98.9 of the Revenue and Taxation Code is amended to read:

98.9. Notwithstanding any other provision of law, commencing with the 1988–89 fiscal year, property tax assessed value attributable to unitary and operating nonunitary property, as defined in Section 723, and Section 723.1, which is assessed by the State Board of Equalization shall be allocated by county as provided in Section 756 and the assessed value and revenues attributable to that allocation shall be allocated within each county as follows:

(a) Each county shall establish one countywide tax rate area. The assessed value of all unitary and operating nonunitary property shall be assigned to this tax rate area. No other property shall be assigned to this tax rate area.

(b) Property assigned to the tax rate area created by subdivision (a) shall be taxed at a rate equal to the sum of the following two rates:

(1) A rate determined by dividing the county's total ad valorem tax levies for the secured roll, including levies made pursuant to Section 100, for the prior year, exclusive of levies for debt service, by the county's total ad valorem secured roll assessed value for the prior year.

(2) A rate determined by dividing the county's total ad valorem tax levies for the secured roll for the prior year for debt service only by the county's total ad valorem secured roll assessed value for the prior year.

(c) The property tax revenue derived from the assessed value assigned to the countywide tax rate area pursuant to subdivision (a) by the use of the tax rate determined in paragraph (1) of subdivision (b) shall be allocated as follows:

(1) For the 1988–89 fiscal year and each fiscal year thereafter, each taxing jurisdiction shall be allocated an amount of property tax revenue equal to 102 percent of the amount of the aggregate property tax revenue it received from all unitary and operating nonunitary property in the prior fiscal year, exclusive of revenue attributable to levies for debt service.

(2) If the amount of property tax revenue available for allocation in the current fiscal year is insufficient to make the allocations required by paragraph (1), the amount of revenue to be allocated to

each taxing jurisdiction shall be prorated based on a factor determined by dividing the total amount of property tax revenue available to all taxing jurisdictions from unitary and operating nonunitary property in the current year, exclusive of revenue attributable to levies for debt service, by the total amount of property tax revenue received by all taxing jurisdictions from unitary and operating nonunitary property in the prior fiscal year, exclusive of revenue attributable to levies for debt service.

(3) If the amount of property tax revenue available for allocation to all taxing jurisdictions in the current fiscal year from unitary and operating nonunitary property, exclusive of revenue attributable to levies for debt service, exceeds 102 percent of the property tax revenue received by all taxing jurisdictions from all unitary and operating nonunitary property in the prior fiscal year, exclusive of revenue attributable to levies for debt service, the amount of revenue in excess of 102 percent shall be allocated to all taxing jurisdictions in the county by a ratio determined by dividing each taxing jurisdiction's share of the county's total ad valorem tax levies for the secured roll for the prior year, exclusive of levies for debt service, by the county's total ad valorem tax levies for the secured roll for the prior year, exclusive of levies for debt service.

(d) The property tax revenue derived from the assessed value assigned to the countywide tax rate area pursuant to subdivision (a) by the use of the tax rate determined in paragraph (2) of subdivision (b) shall be allocated as follows:

(1) An amount shall be computed for each taxing jurisdiction which shall be determined by multiplying the amounts required in the current year pursuant to subdivisions (a) and (c) of Section 93 by that percentage which shall be determined by dividing the amount of property tax revenue the jurisdiction received in the prior year from unitary property and operating nonunitary property by the total amount of property tax revenue the jurisdiction received in the prior year from all property.

(2) The amount of property tax revenue available for allocation pursuant to this subdivision shall be allocated among taxing jurisdictions in the proportion that the amount computed for each taxing jurisdiction pursuant to paragraph (1) bears to the total amount computed pursuant to paragraph (1) for all taxing jurisdictions.

(3) If a taxing jurisdiction is levying a tax rate for debt service for the first time in the current fiscal year, for purposes of determining the percentage specified in paragraph (1), that percentage shall be the percentage determined by dividing the amount of property tax revenue received by that taxing jurisdiction in the prior year pursuant to subdivision (c) from unitary and operating nonunitary property by the total amount of property tax revenue received by that taxing jurisdiction in the prior year from the locally assessed secured roll.

(e) For purposes of this section:

(1) "The county's total ad valorem tax levies for the secured roll" means all ad valorem tax levies for the county's secured roll, including the general tax levy, levies for debt service (including land only and land and improvement rates), and levies for redevelopment agencies.

(2) "The county's total ad valorem secured roll" means the county's local roll, after all exemptions except the homeowner's exemption, and the county's utility roll.

(3) "Taxing jurisdiction" includes a redevelopment agency.

(f) The assessed value of the unitary and operating nonunitary property shall be kept separate for each state assessee throughout the allocation process.

(g) Each state assessee shall be issued only one tax bill for all unitary and operating nonunitary property within the county.

(h) This section does not apply to unitary property of regulated railway companies.

(i) This section does not apply to property which on July 1, 1987, was undeveloped and owned by a utility and which is located within a city, county, or city and county which adopts a resolution stating that the property is subject to a development agreement and that this section shall not apply to that property, and the city, county, or city and county transmits a copy of that resolution, including a legal description of the property, to the State Board of Equalization and the county's auditor-controller prior to January 1, 1988.

SEC. 2. Section 98.10 is added to the Revenue and Taxation Code, to read:

98.10. Notwithstanding any other provision of law, commencing with the 1988–89 fiscal year, property tax assessed value attributable to unitary property, as defined in Section 723, of a regulated railway company which is assessed by the State Board of Equalization, shall be allocated to tax rate areas as follows:

(a) Each tax rate area shall receive an amount of assessed value equal to the amount of assessed value received in the prior fiscal year adjusted for changes in track mileage unless the total amount of assessed value to be allocated is insufficient, in which case, each tax rate area shall receive a pro rata share of the amount it received in the prior fiscal year adjusted for changes in track mileage.

(b) If the total amount of assessed value to be allocated is greater than the amount of assessed value allocated in the prior fiscal year adjusted for changes in track mileage, each tax rate area shall receive a pro rata share of the amount in excess of the prior year's assessed value of the regulated railway company adjusted for track mileage.

(c) If a tax rate area is divided, the prior fiscal year amount of assessed value of the unitary property of the regulated railway company shall be divided among the resulting tax rate areas in the same proportion that the track mileage on unitary property is divided among the resulting tax rate areas.

(d) The assessed value allocated to each tax rate area under subdivision (a), (b), or (c) shall be further allocated between land,

improvements, and personal property in the same proportion as existed for each regulated railway company statewide in the 1987–88 assessment year.

(e) For purposes of this section:

(1) "The amount of assessed value received in the prior fiscal year adjusted for changes in track mileage" means the prior year's amount of assessed value in each tax rate area after it has been adjusted upward or downward in direct proportion to the change in the amount of track mileage on unitary property in the current year over the prior year.

(2) "Track mileage" means the number of miles of track adjusted to reflect the relative importance of mainline, branch, and other track.

SEC. 3. Section 722.5 of the Revenue and Taxation Code is amended to read:

722.5. (a) Real property assessed by the board pursuant to Section 19 of Article XIII of the California Constitution on January 1, which thereafter becomes subject to local assessment, shall not be assessed locally during the remainder of the local assessment year commencing within 60 days after January 1, except as provided in Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1. For the purposes of Section 75.11, real property which becomes subject to local assessment after January 1 and before the following March 1 shall be deemed to be subject to local assessment as of March 1.

(b) Real property which becomes subject to board assessment pursuant to Section 19 of Article XIII of the California Constitution as the result of a lease, a purchase, a change in ownership, or the creation of a possessory interest after January 1 and before the following March 1 shall be deemed to be subject to board assessment as of January 1.

(c) Personal property which becomes subject to board assessment after January 1, and real property which becomes subject to board assessment on or after March 1, and on or before the following January 1, shall not be state assessed until the assessment year commencing on the latter January 1.

SEC. 4. Section 723.1 of the Revenue and Taxation Code is amended to read:

723.1. Operating nonunitary properties are those that the assessee and its regulatory agency consider to be operating as a unit, but the board considers not part of the unit in the primary function of the assessee. This section does not apply to state-assessed property of regulated railway companies. In the case of regulated railway companies, there shall be only two classifications of property for purposes of this code, unitary and nonunitary.

SEC. 5. Section 755 of the Revenue and Taxation Code is amended to read:

755. (a) On or before July 15, the board shall transmit to each county auditor an estimate of the total unitary value and operating

nonunitary value of state-assessed property in the county and of nonunitary state-assessed property in each revenue district in the county. An estimate need not be made for a revenue district that did not levy a tax or assessment during the preceding year unless the board receives on or before January 1 preceding the fiscal year for which the levy is to be made a notice in writing of the proposed levy. The estimate shall be regarded as establishing the total assessed value of state-assessed property in the county and each revenue district in the county for the purpose of determining tax rates, subject only to such changes as may be transmitted on or prior to July 31. All information furnished pursuant to this section is at all times during office hours open to inspection of any interested person or entity.

(b) Notwithstanding subdivision (a), in making the estimate referred to in subdivision (a), the unitary value and nonunitary value of the property of regulated railway companies and property subject to subdivision (i) of Section 98.9 shall be allocated by revenue district.

SEC. 6. Section 756 of the Revenue and Taxation Code is amended to read:

756. (a) On or before July 31, the board shall transmit to each county auditor a roll showing the unitary and operating nonunitary assessments made by the board in the county and the nonoperating nonunitary assessments made by the board in each city and revenue district in the county; provided, however, that the roll need not show the assessments made by the board in a revenue district which did not levy a tax or assessment during the preceding year. Such roll is at all times, during office hours, open to the inspection of any person representing any taxing agency or revenue district, or any district described in Section 2131. If the roll does not show the assessments in a revenue district as herein provided and a notice of a proposed levy is furnished the board in writing, on or before January 1 preceding the fiscal year for which the levy is to be made, the board shall furnish an estimate of the total assessed value of nonoperating nonunitary state-assessed property in the district and shall transmit thereafter to the county auditor a statement of roll change showing the nonoperating nonunitary assessments made by the board in the district.

(b) Notwithstanding subdivision (a), in making the roll referred to in subdivision (a), the unitary value and nonunitary value of the property of regulated railway companies and property subject to subdivision (i) of Section 98.9 shall be enrolled by revenue district.

SEC. 7. Section 7062 of the Revenue and Taxation Code is repealed.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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. 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:

Section 98.9 of the Revenue and Taxation Code, as added by Chapter 1457 of the Statutes of 1986, provided for a new formula for the allocation of assessed values within each county of unitary property and operating nonunitary property assessed by the State Board of Equalization. Certain adjustments in that program are required to make it administratively feasible. In order to provide county auditors with adequate time to implement Section 98.9 in a manner consistent with these necessary adjustments and in order to make necessary changes to related provisions, it is necessary that this act go into immediate effect.

CHAPTER 922

An act to amend Sections 9390.5 and 9391.3 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 9390.5 of the Welfare and Institutions Code is amended to read:

9390.5. (a) The State Department of Health Services shall conduct preadmission screening statewide.

(1) Preadmission screening shall be conducted by the Medi-Cal field offices which shall utilize the option of directly authorizing preadmission screening activities by Medi-Cal service providers, including, but not limited to, multipurpose senior services programs, adult day health care, home health agencies, or other comparable Medi-Cal service providers.

(2) The State Department of Health Services may delegate preadmission screening of general acute care hospital patients to discharge planning units of general acute care hospitals which agree to accept such delegation. Such delegated preadmission screening shall be performed in accordance with criteria established by the State Department of Health Services, in consultation with representatives of general acute care hospitals and community-based services. The criteria shall include referrals to community-based resources as defined in Section 9390.1 and shall emphasize the importance of making such referrals in a timely manner. Prior to implementation of the delegated preadmission screening program, orientation sessions regarding preadmission screening program procedures shall be conducted.

The State Department of Health Services shall work with general

acute care hospitals and general acute care hospital association representatives to develop an acute care hospital reporting mechanism which would allow an independent review of the success of the delegated program. Such a review shall, at the minimum, include the number of home-and-community-based waiver services which were utilized to divert patients into the community. The State Department of Health Services shall report to the Legislature on the results of this review by March 31, 1989. The report shall include all of the following:

(A) The total number of preadmission screens performed.

(B) The total number of preadmission screens from the community.

(C) The total number of preadmission screens from acute care hospitals.

(D) The total number of patients screened that were determined to be prolonged-stay patients.

(E) The total number of patients screened that were determined to be short-stay patients.

(F) The total number of patients diverted from nursing homes.

(G) The total number of patients who could not be diverted.

It is further the intent of the Legislature that the discharge planning units of general acute care hospitals which agree to accept delegated preadmission screening, shall coordinate with the multipurpose senior services program to the extent possible.

(b) Every long-term health care facility which receives an application for admission of a Medi-Cal eligible or Medicare/Medi-Cal eligible person shall contact by telephone the appropriate State Department of Health Services Medi-Cal field office or the appropriate general acute care hospital discharge planner for the purpose of conducting preadmission screening.

(c) Except where the State Department of Health Services has delegated preadmission screening functions to a general acute care hospital discharge planner, every general acute care hospital which identifies a Medi-Cal eligible or Medicare/Medi-Cal eligible patient for referral to a long-term health care facility shall contact by telephone the appropriate State Department of Health Services Medi-Cal field office for the purpose of conducting preadmission screening. Where preadmission screening of acute care hospital patients has been delegated to discharge planning units, the Medi-Cal field office shall review and approve a determination to refer a patient to a skilled nursing facility which is owned or operated by the referring hospital.

(d) Preadmission screening shall not be required for persons referred to certified programs for the mentally ill or developmentally disabled or for persons who are entering active treatment programs for the mentally ill or developmentally disabled.

(e) For the purpose of conducting preadmission screening, and subject to applicable confidentiality requirements, including Section 14100.2, the State Department of Health Services, or its designated

representatives, shall have access to all medical records of Medi-Cal or Medicare/Medi-Cal eligible persons who apply or are referred for admission to a long-term health care facility. It is further the intent of the Legislature that the State Department of Health Services shall coordinate with the Multipurpose Senior Services Program or similar case management agencies, to the extent possible.

(f) All persons who are admitted to nursing homes for a short stay as a result of preadmission screening shall have a discharge plan, including projected length of stay and proposed discharge goal, which shall be reviewed at least monthly for up to four months until the medical status, the ability to perform activities of daily living, and the determination of service needs indicate referral to community-based services for care at home is appropriate.

All persons who are admitted to nursing homes for prolonged care as a result of preadmission screening shall be reviewed for their potential for community-based care during the process of reauthorization of prolonged care Treatment Authorization Request (TAR) and, if appropriate, be referred to community-based service.

(g) All Medi-Cal recipients residing in nursing homes who have not been preadmission screened shall be reviewed for their potential for postadmission screening. Those persons identified as having the potential for living in the community with the support of community-based services shall be postadmission screened and referral made to community-based services, if appropriate. Priority for postadmission screening shall be given to those persons who have been in nursing homes six months or less. All Medi-Cal recipients residing in nursing homes on a six month or less Treatment Authorization Request (TAR) shall be postadmission screened within six months of the effective date of this section. All other Medi-Cal recipients residing in nursing homes shall be postadmission screened within 12 months of the effective date of this section. The State Department of Health Services shall give priority to qualified Multipurpose Senior Services Providers (MSSP) to conduct postadmission screening.

(h) Persons admitted to a long-term health care facility who have been residing in the residential care facility portion of the multilevel facility, as defined in paragraph (9) of subdivision (d) of Section 15432 of the Government Code, are not subject to this section.

(i) Contractors operating under Medi-Cal capitated, case management-based contracts entered into under the authority of this chapter or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 shall assess each covered Medi-Cal patient residing in a long-term care facility or for whom long-term institutional care is contemplated, is assessed for diversion by referral to community-based resources and ambulatory health care services and makes such diversion when feasible on a timely basis. Contractors with existing department-approved utilization review plans which include such an activity shall be deemed to be in compliance with this section.

(j) The State Department of Health Services may delegate the responsibility for carrying out the provisions of this section to Medi-Cal at risk, capitated contractors or projects which do not have a case management feature. Such contracts or projects shall operate under one of the following arrangements:

(1) The contractor or project shall adhere to the procedures developed by the State Department of Health Services to carry out this section.

(2) The contractor or project may, subject to the approval of the State Department of Health Services, revise the department's procedures or adopt its own procedures, provided that the alternative procedures satisfy the intent of this section.

(k) Contractors operating as Medi-Cal capitated case management based contractors pursuant to contracts entered into under the authority of Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 and Sections 1177 and 1177.1 of the Health and Safety Code shall ensure that for each covered Medi-Cal patient resident in a long-term care facility or for whom long-term institutional care is contemplated, the patient's potential is assessed for diversion by referral to community-based resources and ambulatory health care services and that such diversion occurs, when feasible, on a timely basis. Contractors with approved utilization review plans approved by the State Department of Health Services which included such an activity through delegation or other acceptable means, shall be deemed to be in compliance with this section.

(*l*) The State Department of Health Services shall review each capitated contractor's arrangements for and provision of preadmission and postadmission screening during the annual medical audit of the contractor.

SEC. 2. Section 9391.3 of the Welfare and Institutions Code is amended to read:

9391.3. All Medi-Cal field offices shall have a list of alternative community-based services, as defined in Section 9390.1, and shall include senior information and referral telephone numbers, in their areas. The field offices shall provide this information to health providers, including discharge planning units of general acute care hospitals, in their areas.

CHAPTER 923

An act to amend Section 353 of the Code of Civil Procedure, to amend Sections 5230, 7230, 9240, and 15031 of the Corporations Code, to amend Section 21207 of the Government Code, to amend Sections 2, 8, 20, 21, 24, 26, 54, 62, 141, 203, 233, 277, 282, 300, 303, 327, 328, 333, 422, 441, 541.1, 553.3, 608.5, 904, 911, 920, 920.3, 926, 1000, 1004, 1020, 1020.1, 1025.5, 1027, 1041, 1067, 1080, 1191, 1464, 1469, 2100, 2105, 2351.5, 2405, 2406, 2453, 2455, 2456, 2525, 2543, 2555, 2574, 2580, 2614, 2631, 6246, 6247, 6327, 6501, 6511, 6525, 6527, 6541, 6607, 6611, 13101, 13114, 13152, 13153, 13501, 13552, 13655, 16304, and 20114.5 of, to amend the heading of Part 2 (commencing with Section 20) of Division 1 of, to amend the heading of Part 4 (commencing with Section 200) of Division 2 of, to add Sections 23, 46, 52, 216, 1021.5, 2105.5, 2453.5, and 13116 to, to add Chapter 3 (commencing with Section 215) to Part 4 of Division 2 of, Chapter 8 (commencing with Section 573) and Chapter 12 (commencing with Section 707) to Division 3 of, Article 4 (commencing with Section 956) to Chapter 15 of Division 3 of, Chapter 22.5 (commencing with Section 1280) to Division 3 of, Division 7 (commencing with Section 7000) to, and Division 11 (commencing with Section 21100) to, to repeal and add Sections 22, 58, 1862, 1892, and 2652 of, to repeal and add Chapter 13 (commencing with Section 750) of, and Chapter 22 (commencing with Section 1200) of, Division 3 of, to repeal Sections 920.5, 2546, and 15005 of, and to repeal Chapter 8 (commencing with Section 570) of, Chapter 12 (commencing with Section 700) of, Chapter 14 (commencing with Section 830) of, Article 4 (commencing with Section 950) of Chapter 15 of, Article 5 (commencing with Section 980) of Chapter 15 of, Article 3 (commencing with Section 1030) of Chapter 16 of, and Chapter 24 (commencing with Section 1350) of, Division 3 of, the Probate Code, and to amend Section 19265 of the Revenue and Taxation Code, relating to probate law and procedure.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 353 of the Code of Civil Procedure is amended to read:

353. (a) If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced by the person's representatives, after the expiration of that time, and within six months from the person's death.

(b) Except as provided in subdivision (c), if a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against the person's

representatives, after the expiration of that time, and within one year after the date of death, or an action against the estate provided for by subdivision (b) of Section 385 of the Code of Civil Procedure or Section 707 or 721 of the Probate Code may be commenced within one year after the expiration of the time otherwise limited for the commencement thereof.

(c) If a person against whom an action may be brought died before July 1, 1988, and before the expiration of the time limited for the commencement of the action, and the cause of action survives, an action may be commenced against the person's representatives before the expiration of the later of the following times:

(1) July 1, 1989, or one year after the issuing of letters testamentary or of administration, whichever is the earlier time.

(2) The time limited for the commencement of the action.

SEC. 1.2. Section 5230 of the Corporations Code is amended to read:

5230. (a) Any duties and liabilities set forth in this article shall apply without regard to whether a director is compensated by the corporation.

(b) Part 4 (commencing with Section 16000) of Division 9 of the Probate Code does not apply to the directors of any corporation.

SEC. 1.3. Section 7230 of the Corporations Code is amended to read:

7230. (a) Any duties and liabilities set forth in this article shall apply without regard to whether a director is compensated by the corporation.

(b) Part 4 (commencing with Section 16000) of Division 9 of the Probate Code does not apply to the directors of any corporation.

SEC. 1.4. Section 9240 of the Corporations Code is amended to read:

9240. (a) Any duties and liabilities set forth in this article shall apply without regard to whether a director is compensated by the corporation.

(b) Part 4 (commencing with Section 16000) of Division 9 of the Probate Code does not apply to the directors of any corporation.

(c) A director, in making a good faith determination, may consider what the director believes to be:

(1) The religious purposes of the corporation; and

(2) Applicable religious tenets, canons, laws, policies, and authority.

SEC. 1.5. Section 15031 of the Corporations Code is amended to read:

15031. Dissolution is caused:

(1) Without violation of the agreement between the partners,

(a) By the termination of the definite term or particular undertaking specified in the agreement,

(b) By the express will of any partner when no definite term or particular undertaking is specified,

(c) By the express will of all the partners who have not assigned

their interest or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,

(d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner unless otherwise provided in an agreement in writing signed by all the partners before such death or in a court order made pursuant to Section 9762 of the Probate Code;

(5) By the bankruptcy of any partner or the partnership;

(6) By decree of court under Section 15032;

(7) By withdrawal of a partner or admission of a new partner unless otherwise provided in an agreement in writing signed by all of the partners, including any such withdrawing partner or any such newly admitted partner, before such withdrawal or admission; provided that in the case of a newly admitted partner he or she may become a party to any such preexisting agreement by signing the same upon such admission.

None of the provisions of any other section of this chapter shall prevent, or impair the effect or enforceability of, any agreement in writing that a partnership will not be dissolved as provided for in subdivision (4) or (7) of this section.

SEC. 2. Section 21207 of the Government Code is amended to read:

21207. If any person entitled to a benefit from this system is a minor who has no guardian of the estate, the board, if within the limits as to amount of payment and value of the minor's estate specified as of the time of payment under the provisions of the Probate Code authorizing payment to a parent of a minor entitled to the minor's custody, may pay it to the person entitled to custody of the minor to hold for the minor, if the person files with the board a verified statement that the total estate of the minor does not exceed the value so specified or, if in excess of such limits, may pay it to the probate court, and the court may order that such money be deposited in a bank or banks, or a trust company or companies, or invested in an account or accounts in an insured savings and loan association or associations, subject to withdrawal only on order of the probate court, or it may require a guardian of the estate to be appointed and the money paid to such guardian, or prescribe such other conditions as the court in its discretion deems to be in the best interest of the minor. Payment so made is a full discharge of the board and this system. The person shall account to the minor for the

money when the minor reaches the age of majority.

The term "account in an insured savings and loan association" used in this section has the same meaning as in Section 23 of the Probate Code.

SEC. 3. Section 2 of the Probate Code is amended to read:

2. (a) A provision of this code, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be construed as a restatement and continuation thereof and not as a new enactment.

(b) A provision of this code, insofar as it is the same in substance as a provision of a uniform act, shall be so construed as to effectuate the general purpose to make uniform the law in those states which enact that provision.

SEC. 4. Section 8 of the Probate Code is amended to read:

8. Unless otherwise expressly stated:

(a) "Division" means a division of this code.

(b) "Part" means a part of the division in which that term occurs.

(c) "Chapter" means a chapter of the division or part, as the case may be, in which that term occurs.

(d) "Article" means an article of the chapter in which that term occurs.

(e) "Section" means a section of this code.

(f) "Subdivision" means a subdivision of the section in which that term occurs.

(g) "Paragraph" means a paragraph of the subdivision in which that term occurs.

(h) "Subparagraph" means a subparagraph of the paragraph in which that term occurs.

SEC. 5. The heading of Part 2 (commencing with Section 20) of Division 1 of the Probate Code is amended to read:

PART 2. DEFINITIONS

SEC. 6. Section 20 of the Probate Code is amended to read:

20. Unless the provision or context otherwise requires, the definitions in this part govern the construction of Division 1 (commencing with Section 1), Division 2 (commencing with Section 100), Chapter 22 (commencing with Section 1200) and Chapter 22.5 (commencing with Section 1280) of Division 3, Division 6 (commencing with Section 6100), Division 7 (commencing with Section 7000), Division 8 (commencing with Section 13000), Division 9 (commencing with Section 15000), Division 10 (commencing with Section 20100), and Division 11 (commencing with Section 21100).

SEC. 7. Section 21 of the Probate Code is amended to read:

21. "Account," when used to mean a contract of deposit of funds between a depositor and a financial institution, includes a checking account, savings account, certificate of deposit, share account, mutual capital certificate, and other like arrangements.

SEC. 8. Section 22 of the Probate Code is repealed.

SEC. 9. Section 22 is added to the Probate Code, to read:

22. "Account in an insured credit union" means a share account in a credit union, either federally chartered or state licensed, that is insured under Title II of the Federal Credit Union Act.

SEC. 10. Section 23 is added to the Probate Code, to read:

23. (a) "Account in an insured savings and loan association" means a savings account or mutual capital certificate of either of the following:

(1) A federal association.

(2) A savings association doing business in this state which is an "insured institution" as defined in Title IV of the National Housing Act (12 U.S.C. Sec. 1724, et seq.).

(b) As used in this section:

(1) "Federal association" has the meaning given that term in subdivision (b) of Section 5102 of the Financial Code.

(2) "Mutual capital certificate" has the meaning given that term in Section 5111 of the Financial Code.

(3) "Savings account" has the meaning given that term in Section 5116 of the Financial Code.

(4) "Savings association" has the meaning given that term in subdivision (a) of Section 5102 of the Financial Code.

SEC. 11. Section 24 of the Probate Code is amended to read:

24. "Beneficiary" means a person to whom a donative transfer of property is made or that person's successor in interest, and:

(a) As it relates to the estate of a decedent who died intestate, means an heir.

(b) As it relates to the estate of a decedent who died testate, means a devisee.

(c) As it relates to a trust, means a person who has any present or future interest, vested or contingent.

(d) As it relates to a charitable trust, includes any person entitled to enforce the trust.

SEC. 12. Section 26 of the Probate Code is amended to read:

26. "Child" means any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved.

SEC. 13. Section 46 is added to the Probate Code, to read:

46. "Insured account in a financial institution" means an account in a bank, an account in an insured credit union, and an account in an insured savings and loan association, to the extent that the account is insured.

SEC. 14. Section 52 is added to the Probate Code, to read:

52. "Letters," as used in Division 7 (commencing with Section 7000), means letters testamentary, letters of administration, letters of administration with the will annexed, or letters of special administration.

SEC. 15. Section 54 of the Probate Code is amended to read:

54. "Parent" means any individual entitled to take as a parent under this code by intestate succession from the child whose

relationship is involved.

SEC. 16. Section 58 of the Probate Code is repealed.

SEC. 17. Section 58 is added to the Probate Code, to read:

58. (a) "Personal representative" means executor, administrator, administrator with the will annexed, special administrator, successor personal representative, or a person who performs substantially the same function under the law of another jurisdiction governing the person's status.

(b) "General personal representative" excludes a special administrator unless the special administrator has the powers, duties, and obligations of a general administrator under Section 465.

SEC. 18. Section 62 of the Probate Code is amended to read:

62. "Property" means anything that may be the subject of ownership and includes both real and personal property and any interest therein.

SEC. 19. Section 141 of the Probate Code is amended to read:

141. (a) The right of a surviving spouse to any of the following may be waived in whole or in part by a waiver under this chapter:

(1) Property that would pass from the decedent by intestate succession.

(2) Property that would pass from the decedent by testamentary disposition in a will executed before the waiver.

(3) A probate homestead.

(4) The right to have exempt property set aside.

(5) Family allowance.

(6) The right to have an estate set aside under Chapter 6 (commencing with Section 6600) of Part 3 of Division 6.

(7) The right to elect to take community or quasi-community property against the decedent's will.

(8) The right to take the statutory share of an omitted spouse.

(9) The right to be appointed as the personal representative of the decedent's estate.

(b) Nothing in this chapter affects or limits the waiver or manner of waiver of rights other than those referred to in subdivision (a), including but not limited to the right to property that would pass from the decedent to the surviving spouse by nonprobate transfer upon the death of the decedent, such as the survivorship interest under a joint tenancy, a Totten trust account, or a payable-on-death account.

SEC. 20. The heading of Part 4 (commencing with Section 200) of Division 2 of the Probate Code is amended to read:

PART 4. ESTABLISHING AND REPORTING FACT OF DEATH

SEC. 21. Section 203 of the Probate Code is amended to read:

203. (a) Except as provided in subdivision (b), notice of the hearing shall be given as provided in Section 1220.

(b) If the person who commenced the proceedings files an

affidavit with the petition stating that the person has no reason to believe there is any opposition to, or contest of, the petition, the court may act ex parte.

SEC. 22. Chapter 3 (commencing with Section 215) is added to Part 4 of Division 2 of the Probate Code, to read:

CHAPTER 3. REPORTING FACT OF DEATH

215. If a beneficiary or a person in possession of property of the decedent knows or has reason to believe that the decedent received health care under the provisions of 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, the beneficiary or the person in possession of property of the decedent shall give the Director of Health Services notice of the decedent's death not later than 90 days after the date of death. The notice shall include a copy of the decedent's death certificate. The notice shall be given as provided in Section 1215, addressed to the director at the Sacramento office of the director.

SEC. 22.5. Section 216 is added to the Probate Code, to read:

216. (a) Where a deceased person or his or her spouse or minor child has received or may have received care, support, and maintenance in a state hospital for which there is a liability for payment pursuant to Section 7275 of the Welfare and Institutions Code, the estate attorney, or if there is no estate attorney, the beneficiaries, the personal representative, or the persons in possession of any property of the decedent, shall give the Director of Mental Health notice of the person's death.

(b) Where a deceased person has received or may have received care, support, and maintenance in a state hospital for which there is a liability for payment pursuant to Section 7513 of the Welfare and Institutions Code, the estate attorney, or it there is no estate attorney, the beneficiaries, the personal representative, or the person in possession of any property of the decedent shall give the Director of Developmental Services notice of the person's death.

(c) All notices given pursuant to this section shall be mailed postage prepaid to the Sacramento office of the appropriate director no later than 90 days from the date of the deceased person's death and shall include a copy of the decedent's death certificate.

SEC. 23. Section 233 of the Probate Code is amended to read:

233. Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following:

(a) The personal representative of each person the priority of whose death is in issue if there is a personal representative for the person.

(b) All known devisees of each person the priority of whose death is in issue.

(c) All known heirs of each person the priority of whose death is in issue.

(d) All persons (or their attorneys if they have appeared by attorneys) who have requested special notice as provided in Section 1250 in the proceeding in which the petition is filed or who have given notice of appearance in person or by attorney in that proceeding.

SEC. 24. Section 277 of the Probate Code is amended to read:

277. (a) A disclaimer on behalf of a minor shall be made by the guardian of the estate of the minor if one has been appointed or, if none has been appointed, by a guardian ad litem of the minor. A disclaimer by a guardian is not effective unless made pursuant to a court order obtained under this section.

(b) A disclaimer on behalf of a decedent shall be made by the personal representative of the decedent. Except as provided in Part 6 (commencing with Section 10400) of Division 7, a disclaimer by a guardian or personal representative is not effective unless made pursuant to a court order obtained under this section.

(c) A petition for an order authorizing or requiring a guardian or personal representative to execute and file a disclaimer shall be filed in the superior court in the county in which the estate of the minor or decedent is administered or, if there is no administration, the superior court in any county in which administration would be proper. The petition may be filed by the guardian, personal representative, or other interested person.

(d) The petition shall:

(1) Identify the creator of the interest.

(2) Describe the interest to be disclaimed.

(3) State the extent of the disclaimer.

(4) Identify the person or persons the petitioner believes would take the interest in the event of the disclaimer.

(e) Notice of the hearing on the petition shall be given as follows:

(1) If the petition is for an order authorizing or requiring the guardian of the estate of a minor to execute and file the disclaimer, notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1 of Division 4 to all of the persons (other than the petitioner or persons joining in the petition) required to be given notice under that chapter.

(2) If the petition is for an order authorizing or requiring the personal representative of a decedent to execute and file the disclaimer, notice of the hearing on the petition shall be given as provided in Section 1220.

(3) If the petition is for an order authorizing or requiring a guardian ad litem of a minor to execute and file the disclaimer, notice of the hearing on the petition shall be given to the persons and in the manner that the court shall by order direct.

(f) After hearing, the court in its discretion may make an order authorizing or requiring the guardian or personal representative to execute and file the disclaimer if the court determines, taking into consideration all of the relevant circumstances, that the minor or

decedent as a prudent person would disclaim the interest if he or she had the capacity to do so.

SEC. 25. Section 282 of the Probate Code is amended to read:

282. (a) Unless the creator of the interest provides for a specific disposition of the interest in the event of a disclaimer, the interest disclaimed shall descend, go, be distributed, or continue to be held (1) as to a present interest, as if the disclaimant had predeceased the creator of the interest or (2) as to a future interest, as if the disclaimant had died before the event determining that the taker of the interest had become finally ascertained and the taker's interest indefeasibly vested. A disclaimer relates back for all purposes to the date of the death of the creator of the disclaimed interest or the determinative event, as the case may be.

(b) Notwithstanding subdivision (a):

(1) The beneficiary is not treated as having predeceased the decedent for the purpose of determining the generation at which the division of the estate is to be made under Part 6 (commencing with Section 240) of Division 2 or other provision of a will or trust.

(2) The beneficiary of a disclaimed interest is not treated as having predeceased the decedent for the purpose of applying subdivision (d) of Section 6409 or subdivision (b) of Section 6410.

SEC. 26. Section 300 of the Probate Code is amended to read:

300. When a person dies, the title to the person's property, real and personal, passes to the person to whom it is devised or bequeathed by the decedent's last will, or, in the absence of such disposition, to the persons who succeed to the decedent's estate as provided in Part 2 (commencing with Section 6400) of Division 6; but all of the decedent's property is subject to the possession of the executor or administrator and to the control of the superior court for the purposes of administration, sale, or other disposition under the provisions of this code, and is chargeable with the expenses of administering the decedent's estate, and the payment of the decedent's debts and the family allowance, except as otherwise provided in this code.

SEC. 27. Section 303 of the Probate Code is amended to read:

303. (a) No will shall be admitted to probate or letters of administration granted or other proceeding had (except the ordering of a transfer as provided in subdivision (b)), before any judge who is interested as an heir of the decedent, or as a legatee or devisee under a will, or when the judge is named as executor or trustee in the will, or is a creditor or is in any other manner interested or disqualified from acting. A judge who was a witness to a will is disqualified from acting in any proceeding prior to and including the admission of the will to probate or in any proceeding involving its validity or interpretation.

(b) When a petition is filed praying for the admission of a will to probate or for the granting of letters of administration, or when proceedings are pending with respect to an estate, and there is no judge of the superior court in that county qualified to act, the court

or judge must make an order transferring the proceedings to the superior court of an adjoining county, and the clerk, on receipt of the clerk's fee, must transmit to the clerk of the court to which the proceedings are transferred a certified copy of the order together with all papers in the proceedings on file in the clerk's office; and thereafter the court to which the proceedings are transferred shall exercise the same jurisdiction over the estate and all matters relating to the administration thereof as if it had original jurisdiction. But such transfer shall not be ordered when some other judge qualified to act is assigned by the chairman of the judicial council to sit in the county where such proceedings are pending, to hear such proceedings.

(c) The amendments made to this section by Assembly Bill 708 of the 1987–88 Regular Session do not apply in any proceeding commenced before July 1, 1988.

SEC. 28. Section 327 of the Probate Code is amended to read:

327. When the petition is filed, the clerk of the court shall set the same for hearing by the court upon some day not less than 15 nor more than 30 days thereafter, and cause notice thereof to be published pursuant to Section 333. At the request of the petitioner which shall be made at the time the petition is filed, the clerk of the court shall set the petition for hearing by the court upon some day not less than 30 nor more than 45 days thereafter.

SEC. 29. Section 328 of the Probate Code is amended to read:

328. At least 15 days before the hearing, notice of the hearing must be personally served upon each heir of the testator and each devisee and legatee named in the will and each person named as executor who is not petitioning, or mailed, postage prepaid, from a post office within this state, addressed to each such person at his or her respective place of residence or mailing address, if known to the petitioner, or, if not, at the county seat of the county where the proceedings are pending. This notice shall also advise the person receiving the notice that the person may request special notice of the filing of an inventory and appraisement of estate assets or of any petition or account as provided in Section 1250.

Whenever the instrument offered for probate involves or may involve a testamentary trust of property for charitable purposes other than a charitable trust with a designated trustee, resident in this state, or involves or may involve a bequest or devise for a charitable purpose without an identified legatee, devisee, or beneficiary, notice of the hearing on the petition for probate accompanied by a copy of the petition and the will, must be personally served upon the Attorney General or mailed, postage prepaid from a post office within this state, addressed to him or her at the office of the Attorney General at Sacramento, California.

SEC. 30. Section 333 of the Probate Code is amended to read:

333. (a) Publication of notice pursuant to this section shall be for at least 15 days. Three publications in a newspaper published once a week or more often, with at least five days intervening between the

first and last publication dates, not counting such publication dates, are sufficient. Notice shall be published in a newspaper of general circulation in the city where the decedent resided at time of death, or where the decedent's property is located if the court has jurisdiction over the estate pursuant to subdivision (3) of Section 301. If there is no such newspaper, the decedent did not reside in a city, or the property is not located in a city, then notice shall be published in a newspaper of general circulation in the county which is circulated within the community in which the decedent resided or the property is located. If there is no such newspaper, notice shall be published in a newspaper of general circulation published in the State of California nearest to the county seat of the county in which the decedent resided or the property is located, and which is circulated within the community in which the decedent resided or the property is located. If there is no such newspaper, notice shall be given in written or printed form, posted at three of the most public places within such community. For purposes of this section, "city" means a charter city as defined in Section 34101 of the Government Code or a general law city as defined in Section 34102 of the Government Code.

(b) The caption of such notice and decedent's name shall be in at least 8-point type, the text of the notice shall be in at least 7-point type, and the notice shall state substantially as follows:

"NOTICE OF DEATH OF

_____

AND OF PETITION TO ADMINISTER ESTATE NO._____

To all heirs, beneficiaries, creditors, and contingent creditors of _____ and persons who may be otherwise interested in the will or estate, or both:

A petition has been filed by _____ in the Superior Court of _____ County requesting that _____ be appointed as personal representative to administer the estate of _____. The petition is set for hearing in Dept. No. _____ at _____ on _____ at _____ .

(Address)

(Date of hearing) (Time of hearing)

IF YOU OBJECT to the granting of the petition, you should either appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney.

IF YOU ARE A CREDITOR or a contingent creditor of the deceased, you must file your claim with the court and mail a copy to the personal representative appointed by the court within four months from the date of first issuance of letters as provided in Section

9100 of the Probate Code of California. The time for filing claims will not expire prior to four months from the date of the hearing noticed above.

YOU MAY EXAMINE the file kept by the court. If you are interested in the estate, you may request special notice of the filing of an inventory and appraisement of estate assets or of any petition or account as provided in Section 1250 of the California Probate Code.

_____

(Name and address of petitioner, or his or her attorney)"

(c) No petition filed pursuant to Section 326 or 440 may be heard by the court unless an affidavit showing due publication of notice has been filed with the clerk upon completion of the publication. Such affidavit shall contain a copy of the notice, and state the date of its first publication.

(d) When, however, notice has been previously published and an affidavit showing due publication of notice, containing a copy of the notice, and stating the date of its first publication, has been filed with the clerk upon completion of the publication, then, whether published or posted, the caption of any subsequent notice and decedent's name shall be in at least 8-point type, the text of the notice shall be in at least 7-point type, and the notice shall state substantially as follows:

"NOTICE OF

PETITION TO ADMINISTER ESTATE NO._____

To all heirs, beneficiaries, creditors, and contingent creditors of _____ and persons who may be otherwise interested in the will or estate, or both:

A petition has been filed by _____ in the Superior Court of _____ County requesting that _____ be appointed as personal representative to administer the estate of _____. The petition is set for hearing in Dept. No. _____ at _____ on _____ at _____ .

(Address) (Date of hearing) (Time of hearing)

IF YOU OBJECT to the granting of the petition, you should either appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney.

YOU MAY EXAMINE the file kept by the court. If you are interested in the estate, you may request special notice of the filing

of an inventory and appraisement of estate assets or of any petition or account as provided in Section 1250 of the California Probate Code.

(Name and address of petitioner, or his or her attorney)"

(e) If the petition requests authority to administer the estate under the Independent Administration of Estates Act, the notice prescribed by subdivision (b) or subdivision (d) shall include the statement required by subdivision (c) of Section 10451.

SEC. 31. Section 422 of the Probate Code is amended to read:

422. (a) Administration of the estate of a person dying intestate must be granted to one or more of the following persons, who are entitled to letters in the following order:

(1) The surviving spouse, or some competent person whom he or she may request to have appointed.

In the event the surviving spouse is a party to an action in any court for separate maintenance, annulment, or dissolution of the marriage of the decedent and the surviving spouse, and was living apart from the decedent on the date of the decedent's death, then letters of administration pursuant to this subparagraph shall issue to the surviving spouse only after he or she has waived his or her right to file a petition under Section 13650 for transfer of any of the decedent's property to the surviving spouse.

(2) The children.

(3) The grandchildren.

(4) The parents.

(5) The brothers and sisters.

(6) A surviving spouse who is a party to an action in any court for separate maintenance, annulment, or dissolution of the marriage of the decedent and the surviving spouse and who was living apart from the decedent on the date of the decedent's death and who has not waived his or her right to file a petition under Section 13650 for transfer of any of the decedent's property to the surviving spouse.

(7) The next of kin entitled to share in the estate.

(8) The relatives of a previously deceased spouse, when such relatives are entitled to succeed to some portion of the estate.

(9) The conservator or guardian of the estate of the deceased person acting in that capacity at the date of death of the conservatee or ward.

(10) The public administrator.

(11) The creditors.

(12) Any person legally competent.

(b) A relative of the decedent who is entitled to priority under subdivision (a) is entitled to priority only if either of the following facts exist:

(1) The relative is entitled to succeed to all or part of the estate.

(2) The relative is a parent, grandparent, child, or grandchild of

the decedent and either takes under the will of, or is entitled to succeed to all or part of the estate of, another deceased person who is entitled to succeed to all or part of the estate of the decedent.

SEC. 32. Section 441 of the Probate Code is amended to read:

441. The clerk shall set the petition for hearing by the court and cause notice of the hearing to be published pursuant to Section 333. The clerk shall also cause notice of the hearing to be mailed, postage prepaid, to each heir of the decedent named in the petition at least 15 days before the hearing, addressed to each heir at the heir's residence or mailing address as set forth in the petition, otherwise at the county seat of the county where the proceedings are pending. Such mailed notice shall also advise the person receiving such notice that the person may request special notice of the filing of an inventory and appraisement of estate assets or any petition or account as provided in Section 1250.

SEC. 33. Section 541.1 of the Probate Code is amended to read:

541.1. (a) Notwithstanding the provisions of Section 541, in any proceedings for the determination of the amount of bond to be required of the executor or administrator (whether at the time of appointment or subsequently), when satisfactory evidence is presented to the court that the estate of the decedent includes money or securities which have been, or will be, deposited pursuant to Chapter 3 (commencing with Section 9700) of Part 5 of Division 7 upon condition that such money or securities will not be withdrawn except on authorization of the court, the court may, in its discretion, order such money or securities so deposited or such money so invested and may exclude such deposited property from the computation of the amount of such bond or reduce the amount of bond to be required in respect of such money or securities to such an amount as it may deem reasonable.

(b) The petitioner for letters testamentary or of administration may deliver any such money or securities in his or her possession in the manner provided in Chapter 3 (commencing with Section 9700) of Part 5 of Division 7 or may allow the financial institution or trust company to retain any such money or securities already in its possession. In either event, the petitioner shall secure and file with the court a written receipt including the agreement of the financial institution or trust company that such money or securities shall not be allowed to be withdrawn except on authorization of the court. In so receiving and retaining such money or securities, the financial institution or trust company shall be protected to the same extent as though it had received the same from a person to whom letters testamentary or of administration had been issued.

(c) As used in this section:

(1) "Financial institution" has the same meaning as provided in Section 40.

(2) "Trust company" has the same meaning as provided in Section 83.

SEC. 34. Section 553.3 of the Probate Code is amended to read:

553.3. If an administrator or executor moves to have the amount of the bond reduced, the motion shall include an affidavit setting forth the condition of the estate and notice of hearing shall be given as provided in Section 1220.

SEC. 35. Chapter 8 (commencing with Section 570) of Division 3 of the Probate Code is repealed.

SEC. 35.5. Chapter 8 (commencing with Section 573) is added to Division 3 of the Probate Code, to read:

CHAPTER 8. SURVIVAL OF ACTIONS

573. (a) Except as provided in this section, no cause of action is lost by reason of the death of any person, but may be maintained by or against the person's personal representative.

(b) In an action brought under this section against a personal representative, all damages may be awarded which might have been recovered against the decedent had the decedent lived except damages awardable under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant.

(c) Where a person having a cause of action dies before judgment, the damages recoverable by his or her personal representative are limited to the loss or damage the decedent sustained or incurred prior to death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived but not including any damages for pain, suffering, or disfigurement.

(d) This section applies where a loss or damage occurs simultaneously with or after the death of a person who would have been liable for the loss or damage if his or her death had not preceded or occurred simultanously with the loss or damage.

(e) Nothing in this section shall be construed as affecting the assignability of causes of action.

SEC. 36. Section 608.5 of the Probate Code is amended to read:

608.5. (a) At any time prior to entry of the decree of final distribution of the estate, any interested person may file with the court a written objection to the appraisement by the executor, administrator, or probate referee.

(b) The clerk shall fix a time, not less than 15 days after the filing, for a hearing on the objection.

(c) The person objecting shall give notice of the hearing, together with a copy of the objection, as provided in Section 1220. If the appraisement was made by the probate referee, the person objecting shall also mail a copy of the objection and of the notice to the probate referee at least 15 days before the time set for the hearing.

(d) The person objecting to the appraisement has the burden of proof.

(e) Upon completion of the hearing, the court may make any orders it deems appropriate.

SEC. 37. Chapter 12 (commencing with Section 700) of Division 3 of the Probate Code is repealed.

SEC. 38. Chapter 12 (commencing with Section 707) is added to Division 3 of the Probate Code, to read:

CHAPTER 12. CLAIMS AGAINST DECEDENT

Article 1. Actions Involving Decedent

707. The filing of a claim is not required as a prerequisite to commencing an action against the decedent for damages for injury to, or for the death of, a person caused by the wrongful act or neglect of the decedent or to recover upon a judgment obtained in the action if (1) the decedent had liability insurance applicable to the cause of action, (2) the amount of damages sought in the action does not exceed the maximum amount of that insurance, or recovery in excess thereof is waived, and (3) the estate of the decedent otherwise qualifies for summary probate proceedings pursuant to Chapter 3 (commencing with Section 13100) of Part 1 of Division 8. If the amount of damages sought in the action exceeds the maximum amount of the insurance, filing and presentation of a claim is required only with respect to the amount sought in excess of the maximum amount of the insurance. The defendant in the action may be designated as "Estate of (name of decedent), Deceased." No action shall be maintained under this section unless the insurer has been served with a copy of the complaint.

709. If an action is pending against the decedent at the time of his or her death, the plaintiff shall in like manner file his or her claim as required in other cases. No recovery shall be allowed against decedent's estate in the action unless proof is made of the filing. If, however, the action which is pending is an action for damages, the decedent was insured therefor, the insurer has accepted the defense of the cause, and an appearance has been made in such action on behalf of the decedent, no claim shall be required except for amounts in excess of or not covered by the insurance. Further, if any action is pending against the decedent at the time of his or her death and a claim based on such action is not filed within four months after the date letters are first issued to a general personal representative, the court may thereafter allow filing of the claim on such terms as may be just and equitable, upon the claimant's petition and notice of hearing given as provided in Section 1220, if it finds that the claim was not filed previously because neither the claimant nor the claimant's attorney had actual knowledge of the decedent's death at least 15 days prior to the expiration of four months after the date letters are first issued to a general personal representative for filing the claim, but any property distributed pursuant to court order or any payment properly made before notice of such petition shall not be subject to the claim.

No relief shall be granted unless the petition is filed within a

reasonable time after discovery of decedent's death, and in any event within one year after the expiration of four months after the date letters are first issued to a general personal representative, and before petition for final distribution has been filed.

If, at the time of filing the petition hereunder, assets of the estate have been paid to general creditors or some thereof or have been distributed by decree of preliminary distribution to heirs, devisees, or legatees (in either case after expiration of four months after the date letters are first issued to a general personal representative), and it appears that the filing and later establishment of the claim, in the circumstances, would cause or tend to cause unequal treatment between heirs, devisees, legatees, or creditors, then permission to file the claim shall be denied.

709.1. Notwithstanding any other provision of law, the court in which an action described in Section 709 is pending may permit the action to be continued against the defendant in the name of "Estate of (name of decedent), Deceased," upon petition of the plaintiff, pursuant to the same procedure, and upon the same terms and conditions, as are provided in Section 721 for claims which were not the subject of a pending action at decedent's death. The procedure of this section is cumulative and does not supersede the procedure provided in subdivision (b) of Section 385 of the Code of Civil Procedure.

716. (a) An action may be brought by the holder of a mortgage or lien to enforce the same against the property of the estate subject thereto, where all recourse against any other property of the estate is expressly waived in the complaint. The action may be brought whether or not the claim was filed as provided in Part 4 (commencing with Section 9000) of Division 7; but no counsel fees shall be recovered in the action unless the claim was so filed.

(b) As used in this section, "lien" includes, but is not limited to, a judgment that is a lien.

719. When a judgment is recovered, with costs, against any personal representative, the personal representative shall be individually liable for such costs, but they must be allowed the personal representative in the administration accounts, unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended by the personal representative without just cause.

720. If a claim for damages for injuries to, or death of, a person, for which no action specified in Section 709 was pending at the time of the decedent's death, is not filed within the time otherwise limited by this chapter, the court, upon application of the claimant made not later than one year after accrual of the claimant's cause of action, and upon such notice and hearing, if any, as the court may order, shall permit the filing of the claim and, if required, appoint or reappoint a personal representative. Neither the filing of the claim pursuant to this section nor its later establishment, in whole or in part, shall make payments properly made before notice of such application subject to

the claim. The personal representative, distributee, or payee shall not be liable on account of such prior distribution or payment. The court shall impose reasonable conditions upon the filing of the claim to avoid unequal treatment between the heirs, devisees, legatees, or creditors of the estate.

This section shall not be applicable to claims of public entities under Chapter 5 (commencing with Section 9200) of Part 4 of Division 7.

721. (a) Notwithstanding any other provision of law, the filing of a claim as provided in Part 4 (commencing with Section 9000) of Division 7 shall not be required and a civil action may be maintained by a claimant to establish, to the limits of the insurance protection only, a liability of the decedent for which the decedent was protected by liability insurance.

(b) The claimant shall file a verified petition in the superior court of the county in which the administration of the estate is pending, or if none is pending, in the superior court of the county in which administration may be had as provided in Section 301, alleging (1) the nature and amount of the claim, (2) the decedent was protected, in whole or in part, by liability insurance with respect thereto, (3) the interests of the estate will not be prejudiced, and (4) any recovery in the action by the claimant will be limited solely to the decedent's insurance protection. The court, upon such hearing and notice, if any, as it may order, shall grant leave to the claimant to file the action, unless it finds that the interests of the estate will be prejudiced thereby. However, if it appears that the insurer denies coverage or admits liability only conditionally or with reservation, the court may deny leave to the claimant to file the action.

(c) The action by the claimant shall name as the defendant "Estate of (name of decedent), Deceased." Summons shall be served upon a person designated in writing by the insurer or, if none, upon the insurer. Further proceedings shall be in the name of the estate, but otherwise shall be conducted in the same manner and have the same effect as if the action were against the personal representative. For good cause, the court in which the civil action is pending, upon motion of an interested person or upon its own motion, may order the appointment of a personal representative and the personal representative's substitution as the defendant.

(d) The insurer may deny or otherwise contest its liability by cross-complaint in the action or by an independent action against the claimant, but the judgment on the cross-complaint or in the independent action shall not adjudicate rights of persons who are not parties.

(e) A judgment in favor of claimant in an action pursuant to this section shall be enforceable only from the insurance protection and shall not create a lien upon real or other property in the estate.

(f) The remedies of this section are cumulative, and may be pursued concurrently with other remedies.

Article 2. Exonerating Encumbered Property

736. When a testator devises real property subject to a mortgage, deed of trust, or other lien and the intention is indicated by the will that the mortgage, deed of trust, or other lien is to be exonerated, other property specifically devised or bequeathed shall not be sold for the purpose of exonerating the encumbered property unless a contrary intention that the other property be sold is indicated by the will.

SEC. 39. Chapter 13 (commencing with Section 750) of Division 3 of the Probate Code is repealed.

SEC. 40. Chapter 13 (commencing with Section 750) is added to Division 3 of the Probate Code, to read:

CHAPTER 13. ABATEMENT

750. If the testator makes provision by his or her will, or designates the estate to be appropriated, for the payment of his or her debts, the expenses of administration, or family allowance, they must be paid according to such provision or out of the estate thus appropriated, so far as the same is sufficient. If insufficient, that portion of the estate not disposed of by the will, if any, must be appropriated for that purpose; and if that is not sufficient, the property given to residuary legatees and devisees, and thereafter all property devised and bequeathed is liable for the same, in proportion to the value or amount of the several devises and legacies, but specific devises and legacies are exempt from such liability if it appears to the court necessary to carry into effect the intention of the testator, and there is other sufficient estate.

751. The property of a testator, except as otherwise provided in this code, must be resorted to for the payment of legacies in the following order:

(a) The property which is expressly appropriated by the will therefor.

(b) Property not disposed of by the will.

(c) Property which is devised or bequeathed to a residuary legatee.

752. Unless a different intention is expressed in the will, abatement takes place in any class only as between legacies of that class, and legacies to a spouse or to kindred shall abate only after abatement of legacies to persons not related to the testator.

753. When property given by will to persons other than the residuary devisees and legatees is sold for the payment of debts or expenses or family allowance, all the devisees and legatees must contribute according to their respective interests to the devisee or legatee whose devise or legacy has been sold, and the court, when distribution is made, must settle the amount of the several liabilities and decree the amount each person shall contribute, and reserve the same from his or her distributive share for the purpose of such

contribution.

SEC. 41. Chapter 14 (commencing with Section 830) of Division 3 of the Probate Code is repealed.

SEC. 42. Section 904 of the Probate Code is amended to read:

904. (a) Any executor or administrator, at any time after four months from the issuance of letters testamentary or of administration, and upon such notice to the persons interested in the estate as the court or a judge thereof shall require, may petition the court for an allowance upon his or her commissions; and on the hearing the court shall make an order allowing such portion of the commissions, for services rendered up to that time, as the court shall deem proper, and the portion so allowed may be thereupon charged against the estate.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) In addition to the notice required by subdivision (b), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the payment of the commissions.

(2) Each known devisee whose interest in the estate is affected by the payment of the commissions.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the payment of the commissions.

SEC. 43. Section 911 of the Probate Code is amended to read:

911. (a) Any attorney who has rendered services to an executor or administrator, at any time after four months from the issuance of letters testamentary or of administration, may petition the court for an allowance upon his or her fees; and on the hearing the court shall make an order requiring the executor or administrator to pay such attorney out of the estate such compensation, on account of services rendered up to that time, as the court shall deem proper, and such payment shall be made forthwith.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) In addition to the notice required by subdivision (b), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the payment of the fees.

(2) Each known devisee whose interest in the estate is affected by the payment of the fees.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the payment of the fees.

SEC. 44. Section 920 of the Probate Code is amended to read:

920. Every personal representative is chargeable in his or her accounts with all of the estate of the decedent which comes into his

or her possession, and with all the income, issues, and profits of the estate.

SEC. 45. Section 920.3 of the Probate Code is amended to read:

920.3. Upon each accounting, the personal representative shall show that during the period covered by the account he or she has complied with Section 9652.

SEC. 46. Section 920.5 of the Probate Code is repealed.

SEC. 47. Section 926 of the Probate Code is amended to read:

926. (a) When an account is rendered for settlement, the clerk shall set the account for settlement by the court. If the account is for a final settlement, and a petition for the final distribution of the estate is filed with the account, the notice of settlement shall so state, and on the settlement of the account, distribution of the estate to those entitled thereto may be had immediately, without further notice or proceedings.

(b) Notice of the hearing on the account and petition shall be given as provided in Section 1220.

(c) In addition to the notice required by subdivision (b), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the account and petition.

(2) Each known devisee whose interest in the estate is affected by the account and petition.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the account and petition.

SEC. 48. Article 4 (commencing with Section 950) of Chapter 15 of Division 3 of the Probate Code is repealed.

SEC. 48.5. Article 4 (commencing with Section 956) is added to Chapter 15 of Division 3 of the Probate Code, to read:

Article 4. Payment of Debts, Expenses, and Charges

956. If all of the debts have been paid by the first order for payment, the court must direct the payment of legacies and the distribution of the estate among the persons entitled, as provided in the next chapter; but if there are debts remaining unpaid, or if, for other reasons, the estate is not in a condition to be closed, the administration may continue for such time as may be reasonable.

SEC. 48.6. Article 5 (commencing with Section 980) of Chapter 15 of Division 3 of the Probate Code is repealed.

SEC. 49. Section 1000 of the Probate Code is amended to read:

1000. (a) When two months have elapsed after the date letters are first issued to a general personal representative as defined in Section 58 and upon bond—or with or without bond, as the court determines, when the time for filing claims has expired and all uncontested claims have been paid or are sufficiently secured by mortgage, or otherwise, but the estate is not in a condition to be

finally closed and distributed—the executor or administrator, or any heir, devisee, or legatee, or the assignee, grantee, or successor in interest of any heir, devisee, or legatee, may petition the court for distribution of a legacy, devise, or share of the estate or any portion or portions thereof to which he or she is entitled or a payment on account of the legacies to the heirs, devisees, or legatees or any assignees, grantees, or successors in interest or where there are priorities, to those of the class or classes having priorities; or, if the decedent was a nonresident and left a will which has been duly proved or allowed in the state of his or her residence, and the will has been admitted to probate in this state pursuant to Article 4 (commencing with Section 360) of Chapter 1 of Division 3, or if the decedent died intestate, and an administrator has been duly appointed and qualified in the state of his or her residence, and it is necessary, in order that the estate or any part thereof may be distributed according to the will, or it is for the best interests of the estate, that any part of the estate in this state should be delivered to the executor or administrator in the state of the decedent's residence, the executor or administrator may petition the court for an order authorizing the delivery of such portion of the estate as the court shall deem safe and proper and for the best interests of the estate, to the executor or administrator in the state of decedent's residence.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) In addition to the notice required by subdivision (b), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the petition for distribution.

(2) Each known devisee whose interest in the estate is affected by the petition for distribution.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the petition for distribution.

(d) Any person interested in the estate or any personal representative may resist the petition.

SEC. 50. Section 1004 of the Probate Code is amended to read:

1004. When the time for filing claims has expired and all uncontested claims have been paid or are sufficiently secured by mortgage, or otherwise, but the estate is not in a condition to be finally closed and distributed, the executor or administrator to whom authority has been granted to administer the estate without court supervision, in accordance with Part 6 (commencing with Section 10400) of Division 7, may petition the court for authority to distribute a portion of the estate to the person or persons entitled thereto. Such petition need not include an accounting, provided that when the petition seeks authority to distribute to a trustee the petition shall include an accounting unless the trustee consents to the distribution

without an accounting. The total amount of the property distributed under this section shall not exceed 50 percent of the net value of the estate. Notice of the hearing on the petition shall be given as provided in Section 1220, but the court may order the notice to be given for a shorter period or dispensed with. If the court shall determine that all of the allegations of the petition are true, that the estate is but little indebted, that the property to be distributed does not exceed 50 percent of the net value of the estate, and that the distribution may be made without loss or injury to the estate or any person interested therein, the court shall make an order authorizing the executor or administrator to distribute the property to the person or persons entitled thereto. For purposes of this section, "net value of the estate" means the excess of the value of the assets of the estate reflected by all inventories and appraisements on file with the court over the total amount of all creditors' claims filed and liens and encumbrances recorded or known to the executor or administrator not reflected in any creditors' claims filed, excluding death tax liens occasioned by the decedent's death.

SEC. 51. Section 1020 of the Probate Code is amended to read:

1020. (a) Immediately upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the petition of the executor or administrator, or of any heir, devisee or legatee, or his or her assignee, grantee or successor in interest, the court must proceed to distribute the residue of the estate among the persons entitled thereto. Any person interested in the estate or any coexecutor or coadministrator may resist the petition.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) In addition to the notice required by subdivision (b), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the petition.

(2) Each known devisee whose interest in the estate is affected by the petition.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the petition.

SEC. 51.5. Section 1020.1 of the Probate Code is amended to read:

1020.1. The court before making distribution of any property of a decedent to any assignee or transferee of any heir, devisee or legatee or before making distribution to any person other than an heir, devisee, or legatee pursuant to any agreement, request or instructions of any heir, devisee or legatee or of any attorney-in-fact of any heir, devisee or legatee may on the motion of any person interested in the estate or on the motion of the public administrator or on its own motion inquire into the consideration for such assignment, transfer, agreement, request or instructions and into the amount of any fees, charges, or consideration paid or agreed to be paid by the heir, devisee or legatee and into the circumstances

surrounding the execution of such assignment, transfer, agreement, request or instructions and if it finds that the fees, charges or consideration paid by any such heir, devisee or legatee is grossly unreasonable or that any such assignment, transfer, agreement, request or instructions was obtained by duress, fraud or undue influence it may refuse to make distribution pursuant thereto except upon such terms as it deems just and equitable. Notice of a hearing on any motion made pursuant to this section shall be served personally or by registered mail as the court may direct at least 15 days before the hearing upon the heir, devisee, or legatee executing any such assignment, transfer, agreement, request, or instructions and upon the person or persons claiming thereunder.

SEC. 52. *Section 1021.5 is added to the Probate Code, to read:*

1021.5. If an option granted pursuant to Chapter 16 (commencing with Section 9960) of Part 5 of Division 7 extends beyond the closing of administration, the decree of final distribution shall provide that the real property affected be distributed subject to the option.

SEC. 53. Section 1025.5 of the Probate Code is amended to read:

1025.5. Within one year from the date of issuance of letters in estates not required to file a federal estate tax return and within 18 months from the date of issuance of letters in estates where such return is required, the executor or administrator shall either petition for final distribution of the estate or file a verified report of status of administration. If a report is filed, it shall show the condition of the estate and the reasons why the estate cannot be distributed and closed. Notice of the hearing of the report shall be given as provided in Section 1220. Upon the hearing of the report, the court may either order that the administration of the estate continue for the time and upon the terms and conditions as it determines reasonable, provided that it finds that a continuance is in the best interests of the estate or the persons interested therein, or it may order the executor or administrator to file the petition for final distribution.

If a petition or report is not filed by the executor or administrator within the times set forth herein or prescribed by the court, then, upon petition of any person interested in the estate or upon its own motion, the court may cite the executor or administrator to appear before the court and show the condition of the estate and the reasons why the estate cannot be distributed and closed. Upon the hearing of the citation, the court may either order the administration of the estate to continue as above provided or may order the executor or administrator to file the petition for final distribution.

Failure of the executor or administrator to comply with any order made under this section shall be grounds for revocation of letters.

If, upon the hearing for final distribution or for an allowance upon the commissions of the executor or administrator or upon the fees of the attorney, the court finds that the time taken for administration of the estate exceeds the applicable time set forth herein or prescribed by the court, and was caused by factors within the control

of the executor or administrator or the attorney and that the time taken was not in best interests of the estate or the persons interested therein, the court may, notwithstanding the provisions of Sections 901 and 910, reduce the fees or commissions of the person or persons having control of those factors by an amount as the court deems appropriate, regardless of whether the fees or commissions otherwise allowable under the provisions of Sections 901 and 910 would be reasonable compensation for the services rendered by such person or persons.

This section shall be applicable only to the estates of persons dying on or after January 1, 1977.

SEC. 54. Section 1027 of the Probate Code is amended to read:

1027. (a) Executors or administrators, public or otherwise, shall petition for distribution of an estate at the time of filing a final account. If the court, at the time set for the hearing of the final account, or such time thereafter to which the matter may be continued, does not distribute the entire balance of the estate remaining for distribution to known heirs, devisees, or legatees entitled to succeed thereto, it must distribute to the State of California that portion of the estate not distributed to the known heirs, devisees, or legatees. Insofar as practical, any real property or tangible personal property shall be converted to money prior to transmittal to the state.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) In addition to the notice required by subdivision (b), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the petition.

(2) Each known devisee whose interest in the estate is affected by the petition.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the petition.

(d) Whenever it appears that the estate or any portion thereof is to be distributed to the State of California because there are no known heirs or that the estate or any portion thereof is to be distributed to heirs, devisees, or legatees whose whereabouts are unknown, the executor or administrator must serve the State Controller, personally or by mail, with a copy of the petition for distribution, together with notice of the hearing thereon, specifying the date of the hearing, and a copy of the latest account filed with the court, at least 30 days prior to the date of the hearing.

(e) If the court distributes the estate or any portion thereof to the State of California, and the distributing clause contains words otherwise creating a trust in favor of certain unknown or unidentified persons as a class, the distribution shall vest in the State of California both legal and equitable title to the property so distributed; saving, however, the right of claimants to appear and

claim the estate or any portion thereof, as in this section provided.

(f) Upon the rendition of a decree of distribution, any money distributed to the State of California shall forthwith be delivered to the State Treasurer by the executor or administrator, and all other personal property so distributed shall forthwith be delivered to the State Controller for deposit in the State Treasury.

(g) A certified copy of the decree of distribution and of any court orders amending the decree of distribution shall be delivered to the State Controller by the executor or administrator at the time of making any remittance in connection with an estate.

(h) No deposit of property in an estate shall be made in the county treasury by any executor or administrator, public or otherwise, if the estate has previously been distributed to the State of California pursuant to this section, but the estate shall be transmitted forthwith to the State Treasurer or State Controller as provided in this section.

(i) The property so distributed shall be held by the State Treasurer for a period of five years from the date of the decree making the distribution, within which time any person may claim the estate or any part thereof in the manner provided by Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(j) Any person who does not appear and claim, as herein required, shall be forever barred, and such property, or so much thereof as is not claimed, shall vest absolutely in the state.

SEC. 54.5. Article 3 (commencing with Section 1030) of Chapter 16 of Division 3 of the Probate Code is repealed.

SEC. 55. Section 1041 of the Probate Code is amended to read:

1041. The order may be made on the petition of the executor or administrator or of any person interested in the estate. When the petition is filed, the clerk shall set the petition for hearing by the court, and the petitioner shall give notice of the hearing as provided in Section 1220. Any person interested in the estate may appear and contest the petition by filing written objections thereto.

SEC. 56. Section 1067 of the Probate Code is amended to read:

1067. The final settlement of an estate, as provided in this chapter, shall not prevent a subsequent issue of letters testamentary or of administration, or of administration with the will annexed, if other property of the estate is discovered, or if it becomes necessary or proper for any cause that letters should be again issued. The court shall issue such letters to the person or persons entitled thereto in the same order and manner as is directed in relation to original letters of administration, provided, however, that the administrator who served at the time of the order of discharge shall have priority.

Whenever an estate, or any portion thereof, has been distributed to the State of California, a copy of any petition for subsequent issuance of letters testamentary or of administration, or of administration with the will annexed, and notice of any hearing thereon, shall be served on the State Controller as provided in Section 1220.

SEC. 57. Section 1080 of the Probate Code is amended to read:

1080. Anytime after the commencement of the time for filing claims and prior to the time a petition for final distribution has been filed, the executor or administrator, or any person claiming to be an heir of the decedent or entitled to distribution of the estate or any part thereof, may file a petition setting forth his or her claim or reason and praying that the court determine the persons who are entitled to distribution of the estate. Notice of the hearing shall be given as provided in Section 1220. At least 15 days before the date set for the hearing on the petition by the court, the petitioner also shall cause notice of the hearing thereof to be mailed to all legatees and devisees and to all known heirs of the decedent addressed to them at their respective offices or places of residence, if known, and if not, at the county seat of the county where the proceedings are pending, or to be personally served upon these persons. Any person may appear and file a written statement setting forth the person's interest in the estate. No other pleadings are necessary and the allegations of each claimant shall be deemed to be denied by each of the other claimants to the extent that they conflict with any claim of the latter.

Whenever any estate involves or may involve a charitable trust, other than a charitable trust with a designated trustee who may lawfully accept the trust, or involves or may involve a bequest or devise for a charitable purpose without an identified legatee, devisee, or beneficiary thereof, or involves or may involve an escheat to the State of California, the Attorney General shall be deemed to be a person entitled to distribution within the meaning of this section and shall be entitled to file the petition referred to in this section and shall be given written notice of the hearing in the same manner as legatees and devisees.

SEC. 58. Section 1191 of the Probate Code is amended to read:

1191. Notice of the hearing shall be given as provided in Section 1220.

SEC. 59. Chapter 22 (commencing with Section 1200) of Division 3 of the Probate Code is repealed.

SEC. 60. Chapter 22 (commencing with Section 1200) is added to Division 3 of the Probate Code, to read:

CHAPTER 22. NOTICES

Article 1. General Notice Provisions

1200. (a) Except as provided in subdivisions (b), (c), and (d), this chapter governs notice required or permitted under this code.

(b) This chapter does not apply to proceedings under Division 4 (commencing with Section 1400) (guardianship and conservatorship) or Division 9 (commencing with Section 15000) (Trust Law), except that Sections 1201, 1202, 1204, 1205, 1207, 1240, 1241, and 1242 apply to proceedings under any of the divisions of this code.

(c) This chapter does not apply to notice under a particular provision to the extent that the particular provision is inconsistent with this chapter.

(d) This chapter does not apply to the giving of a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. The applicable law in effect before July 1, 1988, continues to apply to the giving of that notice, notwithstanding its amendment or repeal by the act that enacted this section.

1201. If a person is required to give notice, the person required to give the notice need not give the notice to himself or herself or to any other person who joins in the petition.

1202. Where the court determines that the notice otherwise required is insufficient in the particular circumstances, the court may require that further or additional notice, including a longer period of notice, be given.

1203. (a) Subject to subdivisions (b) and (c), the court may, for good cause, shorten the time for giving a notice of hearing.

(b) The court may not shorten the time for giving the notice of hearing required by Section 328, 441, or 9861.

(c) Unless the particular provision governing the publication of notice of hearing otherwise provides, the court may not shorten the time for publication of notice of hearing.

1204. A person, including a guardian ad litem, guardian, conservator, trustee, or other fiduciary, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding.

1205. If a hearing is continued or postponed, no further notice of the continued or postponed hearing is required unless ordered by the court.

1206. (a) Subject to subdivision (b), where notice is required to be given to known heirs or devisees, notice shall be given to the following persons:

(1) If the estate is an intestate estate, to the heirs named in the petition for letters of administration and to any additional heirs who become known to the person giving the notice prior to the giving of the notice.

(2) If the estate is a testate estate, to the devisees named in the petition for probate of the will and to any additional devisees who become known to the person giving the notice prior to the giving of the notice.

(b) Notice need not be given to a person under subdivision (a) if the person's interest has been satisfied pursuant to court order or as evidenced by the person's written receipt or written acceptance.

1207. (a) Subject to subdivision (b), where notice is required to be given to a decedent's beneficiaries, devisees, or heirs, notice need not be given to a person who, because of a possible parent-child relationship between a stepchild and a stepparent or between a foster child and a foster parent, may be (1) an heir of the decedent or (2) a member of a class to which a devise is made.

(b) Subdivision (a) does not apply where the person required to give the notice has actual knowledge of facts that a person would reasonably believe give rise under Section 6408 to the parent-child relationship between the stepchild and the stepparent or between the foster child and the foster parent.

1208. (a) Except as provided in subdivision (b), if notice is required to be given to a trust or trustee, notice to trust beneficiaries is not required.

(b) Subject to subdivision (c), where the personal representative and the trustee, or the person named as trustee, are the same person, notice shall be given to (1) each person who, under the terms of the trust, would be presently entitled to any payment if the trust were in effect, or (2) if there are no such persons, to each person who, under the terms of the trust, would be entitled to any distribution if the trust were terminated at the time the notice is required to be given.

(c) Notice to trust beneficiaries is not required under subdivision (b) where the trust has more than one trustee and notice is given to a cotrustee who is not a personal representative.

1209. (a) Where notice is required to be given to the State of California, the notice shall be given to the Attorney General.

(b) Where notice is required to be given to the Attorney General, the notice shall be mailed to the Attorney General at the office of the Attorney General at Sacramento, California.

Article 2. Mailing in General

1215. Unless otherwise expressly provided:

(a) If a notice or other paper is required or permitted to be mailed to a person, notice shall be mailed as provided in this section or personally delivered as provided in Section 1216.

(b) The notice or other paper shall be sent by:

(1) First-class mail if the person's address is within the United States. First-class mail includes certified, registered, and express mail.

(2) Airmail if the person's address is not within the United States.

(c) The notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person to whom it is mailed.

(d) When the notice or other paper is deposited in the mail, mailing is complete and the period of notice is not extended.

1216. (a) If a notice or other paper is required or permitted to be mailed to a person, it may be delivered personally to that person. Personal delivery as provided in this section satisfies a provision that requires or permits a notice or other paper to be mailed.

(b) Personal delivery pursuant to this section is complete when the notice or other paper is delivered personally to the person who

is to receive it.

1217. If a notice or other paper is required to be served or otherwise given and no other manner of giving the notice or other paper is specified by statute, the notice or other paper shall be mailed or personally delivered as provided in this article.

Article 3. Mailing Notice of Hearing

1220. (a) Notice of a hearing shall be given as provided in this section in the following cases:

(1) Where another section so requires.

(2) Where notice of a hearing is required but no other period or manner is prescribed by statute, unless the period or manner of notice is ordered by the court or judge.

(b) At least 15 days before the time set for the hearing, the petitioner or the person filing the report, account, or other paper shall cause notice of the time and place of the hearing to be mailed to the persons required to be given notice.

(c) Unless the section requiring notice specifies the persons to be given notice, notice shall be mailed to all of the following:

(1) The personal representative.

(2) All persons who have given notice of appearance in the estate proceeding in person or by attorney. If the person appeared by attorney, the notice shall be mailed to the attorney.

(d) The notice shall be addressed to the person required to be given notice at his or her office or place of residence, if known, or, if neither address is known, to the person at the county seat where the proceedings are pending.

(e) Nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Article 6 (commencing with Section 1250).

(f) The court for good cause may dispense with the notice otherwise required to be given to a person as provided in this section.

Article 4. Posting Notice of Hearing

1230. Where notice of hearing is required to be posted as provided in this section:

(a) At least 15 days before the time set for the hearing, the court clerk shall cause a notice of the time and place of the hearing to be posted at the courthouse of the county where the proceedings are pending. If court is held at a place other than the county seat, the notice may be posted either at the courthouse of the county where the proceedings are pending or at the building where the court is held.

(b) The posted notice of hearing shall state all of the following:

(1) The name of the estate.

(2) The name of the petitioner.

(3) The nature of the petition, referring to the petition for further

particulars.

(4) The time and place of the hearing of the petition.

Article 5. Citations

1240. A citation may be issued by the court clerk on the application of any party, without a court order, except in cases where an order is expressly required by law.

1241. The citation shall be directed to the person to be cited, signed by the court clerk, and issued under the seal of the court. The citation shall contain the title of the proceeding, a brief statement of the nature of the proceeding, and a direction that the person cited appear at a time and place specified.

1242. The citation shall be served on the person cited in the same manner as provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. Except as otherwise provided by statute, the citation shall be served at least five days before its return day.

Article 6. Request for Special Notice

1250. (a) At any time after the issuance of letters, any person interested in the estate, whether as devisee, heir, creditor, beneficiary under a trust, or as otherwise interested, may in person or by attorney, file with the court clerk, a written request for special notice.

(b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to which notices shall be sent.

(c) Special notice may be requested of any or all of the following matters:

(1) Petitions filed in the estate proceeding.

(2) Inventories and appraisements of the estate, including any supplemental inventories and appraisements.

(3) Objections to an appraisement made by the personal representative or probate referee.

(4) Accounts of a personal representative.

(5) Reports of status of administration.

(d) Special notice may be requested of any matter in subdivision (c) by describing it, or of all the matters in subdivision (c) by referring generally to "the matters described in subdivision (c) of Section 1250 of the Probate Code" or by using words of similar meaning.

(e) A copy of the request shall be personally delivered or mailed to the personal representative or to the attorney for the personal representative. If personally delivered, the request is effective when it is delivered. If mailed, the request is effective when it is received.

(f) When the original of the request is filed with the court clerk, it shall be accompanied by a written admission or proof of service.

1251. A request for special notice may be modified or withdrawn in the same manner as provided for the making of the initial request.

1252. (a) If a request has been made pursuant to Section 1250 for special notice of a hearing, the person filing the petition, report, or account, or other paper shall give written notice of the filing, together with a copy of the petition, report, or account, or other paper, and the time and place set for the hearing, by mail to the person named in the request at the address set forth in the request, at least 15 days before the time set for the hearing.

(b) If a request has been made pursuant to Section 1250 for special notice of the filing of an inventory and appraisement of the estate or of the filing of any other paper that does not require a hearing, the inventory and appraisement or other paper shall be mailed not later than 15 days after the inventory and appraisement or other paper is filed with the court.

Article 7. Proof of Giving Notice

1260. (a) If notice of a hearing is required, proof of giving notice of the hearing shall be made to the satisfaction of the court at or before the hearing.

(b) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived it, the court shall so find in its order.

(c) The finding described in subdivision (b), when the order becomes final, is conclusive on all persons.

1261. Proof of mailing may be made in the manner prescribed in Section 1013a of the Code of Civil Procedure.

1262. 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.

1263. Proof of posting may be made by the affidavit of the person who posted the notice.

1264. Proof of notice by personal delivery may be made by the affidavit of the person making the delivery showing the time and place of delivery and the name of the person to whom delivery was made.

1265. Proof of notice, however given, may be made by evidence presented at the hearing.

SEC. 60.5. Chapter 22.5 (commencing with Section 1280) is added to Division 3 of the Probate Code, to read:

CHAPTER 22.5. ORDERS AND PROCEDURE

Article 1. Rules of Procedure

1280. All issues of fact joined in probate proceedings must be tried in conformity with the requirements of the rules of practice in civil actions. The party affirming is deemed plaintiff, and the one

denying or avoiding is deemed defendant. When a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, must settle and frame the issues to be tried. If no jury is demanded, the court must try the issues joined, and sign and file its decision in writing, as provided in civil actions. Judgment on the issue joined, as well as for costs, may be entered and enforced as provided in Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

1281. A motion for a new trial in probate proceedings can be made only in cases of contests of wills, either before or after probate, in proceedings to determine heirship and interests in estates, and in those cases where the issues of fact, of which a new trial is sought, were of such character as to entitle the parties to have them tried by a jury, whether or not they were so tried.

1282. When not otherwise prescribed by this code or by rules adopted by the Judicial Council, either the superior court or the court on appeal, may, in its discretion, order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require.

1283. Except as otherwise provided by this code or by rules adopted by the Judicial Council, the provisions of Part 2 (commencing with Section 307) and of Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure are applicable to and constitute the rules of practice in the proceedings mentioned in this code with regard to discovery, trials, new trials, appeals, and all other matters of procedure.

An affidavit or verified petition must be received as evidence when offered in any uncontested probate proceedings, including proceedings relating to the administration of estates of decedents and proceedings relating to the administration of estates of persons for whom a guardian or conservator has been appointed and in uncontested proceedings to establish a record of birth. The evidence of one or more of the subscribing witnesses may be received by an affidavit to which there is attached a photographic copy of the will, in any uncontested will proceedings.

1284. (a) Except as otherwise provided by statute, all of the following shall be verified:

(1) A petition, report, or account.

(2) An objection or response to a petition, report, or account.

(b) The verification of a petition shall be made by the petitioner or, if there are two or more petitioners, by any of them. The verification of a report or account shall be made by the person who has the duty to make the report or account. The verification of an objection or response shall be made by the objector or respondent.

1285. When a petition, report, account, or other matter that requires a hearing is filed with the clerk of the court, the clerk shall set the matter for hearing.

1286. The court may continue or postpone any hearing, from

time to time, in the interest of justice.

1287. At the hearing the court shall hear and determine the matter and any response or objection presented and shall make such orders as may be appropriate.

1288. Where compensation, pension, insurance, or other allowance is made or awarded by a department or bureau of the United States government to a decedent's estate, the department or bureau has the same right as an interested person to request special notice, to commence and prosecute an action on the bond of a personal representative, and to file written exceptions to a personal representative's account or contest the account.

1289. If an interested person has a guardian or conservator of the estate who resides in this state, personal service on the guardian or conservator of any process, notice, or court order concerning a decedent's estate is equivalent to service on the ward or conservatee, and it is the duty of the guardian or conservator to attend to the interests of the ward or conservatee in the matter. The guardian or conservator may appear for the ward or conservatee and waive any process, notice, or order to show cause that a person not under legal disability might waive.

Article 2. Orders

1290. Orders and decrees made by the court or a judge thereof, in probate proceedings, need not recite the existence of facts, or the performance of acts, upon which the jurisdiction of the court or judge may depend, but it is only necessary that they contain the matters ordered or adjudged, except as otherwise provided in this code.

1291. All orders and decrees of the court or judge must be entered at length in the minute book of the court, or else signed by the judge and filed, provided that decrees of distribution shall be entered at length in a judgment book or other permanent record of the court.

1292. When an order is made setting apart a homestead, confirming a sale or making distribution of real property, or determining any other matter affecting the title to real property, a certified copy thereof shall be recorded in the office of the county recorder of each county in which the land, or any part thereof, lies; and from the time of that filing for record, notice is imparted to all persons of the contents thereof.

1293. When a personal representative, public or otherwise, deposits money or other personal property in a county treasury during administration or after final distribution of the estate of a deceased person, the personal representative shall, within 30 days after the date on which the court makes the decree of distribution or any order amending the decree, deliver to the county treasurer a certified copy of the decree or other court order.

Article 3. Appeals

1297. An appeal may be taken from an order or the refusal to make an order:

(a) Granting or revoking letters.

(b) Admitting a will to probate or revoking the probate thereof.

(c) Setting aside a small estate under Section 6609.

(d) Setting apart property as a homestead or claimed to be exempt from enforcement of a money judgment.

(e) Granting or modifying a family allowance.

(f) Directing or authorizing the sale or conveyance or confirming the sale of property.

(g) Directing or authorizing the granting of an option to purchase real property.

(h) Adjudicating the merits of a claim under Chapter 11 (commencing with Section 9860) of Part 5 of Division 7.

(i) Allocating debts under Chapter 3 (commencing with Section 11440) of Part 9 of Division 7.

(j) Settling an account of a personal representative.

(k) Instructing or directing a personal representative.

(*l*) Directing or allowing the payment of a debt, claim, devise, or attorney's fee.

(m) Determining heirship or the persons to whom distribution should be made.

(n) Distributing property.

(o) Determining that property passes to, or confirming that property belongs to, the surviving spouse under Section 13656.

(p) Fixing an inheritance tax or determining that none is due.

(q) Authorizing a personal representative to invest or reinvest any surplus money under Section 9732.

1298. If an order appointing a personal representative is reversed on appeal for error, all lawful acts in administration of the estate performed by the personal representative after qualification of the personal representative and before the reversal are as valid as though the order were affirmed.

1299. The following papers, without being attached together, constitute the judgment roll in proceedings under this code:

(a) The petition, application, contest, report, or account that initiates a particular proceeding; any order directing notice to be given of the hearing; any notice of the hearing, or any order to show cause made, with the affidavits showing the publication, posting, or mailing of the notice or order as required by law or order of the court; the citation, in case no answer or written opposition is filed by a party entitled, by law or order of court, to notice of the proceeding by citation, with the affidavit or proof of service, and if service of the citation is made by publication, the affidavit for the publication and the order directing publication; any finding of the court or referee; the order or judgment made or rendered; and the letters, if any.

(b) If an answer, demurrer, written opposition, or counter

petition is filed in the proceeding, all pleadings and papers in the nature of pleadings; all orders striking out any pleading in whole or in part; any order made on demurrer, or relating to a change of parties; the verdict of the jury, if any; and the papers described in subdivision (a).

(c) If the proceeding is for the probate of a will, the will; and if the proceeding is a contest of a will, or for the revocation of the probate of a will, or a partial, ratable, or final distribution of the estate under a will, the will and the order admitting the will to probate; and the papers described in subdivisions (a) and (b).

(d) If the proceeding is for the settlement of the final account of the personal representative, or for the final distribution of the estate, the affidavit showing publication of notice to creditors, and the papers described in subdivisions (a), (b), and (c).

SEC. 60.7. Chapter 24 (commencing with Section 1350) of Division 3 of the Probate Code is repealed.

SEC. 61. Section 1464 of the Probate Code is amended to read:

1464. When notice of the time and place of hearing is required to be given by this chapter or by any other provision of this division, the notice shall be in the form prescribed by the Judicial Council.

SEC. 62. Section 1469 of the Probate Code is amended to read:

1469. When a provision of this division applies the provisions of this code applicable to personal representatives to proceedings under this division, a reference to Section 1220 or Section 1230 in the provisions applicable to personal representatives shall be deemed to be a reference to this chapter.

SEC. 63. Section 1862 of the Probate Code is repealed.

SEC. 64. Section 1862 is added to the Probate Code, to read:

1862. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 65. Section 1892 of the Probate Code is repealed.

SEC. 66. Section 1892 is added to the Probate Code, to read:

1892. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 66.5. Section 2100 of the Probate Code is amended to read:

2100. Guardianships and conservatorships are governed by the provisions of this division. If no specific provision of this division is applicable, the provisions applicable to administration of estates of decedents govern so far as they are applicable to like situations.

SEC. 67. Section 2105 of the Probate Code is amended to read:

2105. (a) The court, in its discretion, may appoint for a ward or conservatee:

(1) Two or more joint guardians or conservators of the person.

(2) Two or more joint guardians or conservators of the estate.

(3) Two or more joint guardians or conservators of the person and estate.

(b) When joint guardians or conservators are appointed, each

shall qualify in the same manner as a sole guardian or conservator.

(c) Subject to subdivisions (d) and (e):

(1) Where there are two guardians or conservators, both must concur to exercise a power.

(2) Where there are more than two guardians or conservators, a majority must concur to exercise a power.

(d) If one of the joint guardians or conservators dies or is removed or resigns, the powers and duties continue in the remaining joint guardians or conservators until further appointment is made by the court.

(e) Where joint guardians or conservators have been appointed and one or more are (1) absent from the state and unable to act, or (2) otherwise unable to act, or (3) legally disqualified from serving, the court may, by order made with or without notice, authorize the remaining joint guardians or conservators to act as to all matters embraced within its order.

SEC. 68. Section 2105.5 is added to the Probate Code, to read:

2105.5. (a) Except as provided in subdivision (b), where there is more than one guardian or conservator of the estate, one guardian or conservator is not liable for a breach of fiduciary duty committed by another guardian or conservator.

(b) Where there is more than one guardian or conservator of the estate, one guardian or conservator is liable for a breach of fiduciary duty committed by another guardian or conservator of the same estate under any of the following circumstances:

(1) Where the guardian or conservator participates in a breach of fiduciary duty committed by the other guardian or conservator.

(2) Where the guardian or conservator improperly delegates the administration of the estate to the other guardian or conservator.

(3) Where the guardian or conservator approves, knowingly acquiesces in, or conceals a breach of fiduciary duty committed by the other guardian or conservator.

(4) Where the guardian or conservator negligently enables the other guardian or conservator to commit a breach of fiduciary duty.

(5) Where the guardian or conservator knows or has information from which the guardian or conservator reasonably should have known of the breach of fiduciary duty by the other guardian or conservator and fails to take reasonable steps to compel the other guardian or conservator to redress the breach.

SEC. 69. Section 2351.5 of the Probate Code is amended to read:

2351.5. (a) The limited conservator has the care, custody, and control of the limited conservatee, except that a limited conservator shall not have any of the following powers or controls over the limited conservatee unless such powers or controls are specifically requested in the petition for appointment of a limited conservator and granted by the court in its order appointing the limited conservator:

(1) To fix the residence or specific dwelling of the limited conservatee.

(2) Access to the confidential records and papers of the limited conservatee.

(3) To consent or withhold consent to the marriage of the limited conservatee.

(4) The right of the limited conservatee to contract.

(5) The power of the limited conservatee to give or withhold medical consent.

(6) The limited conservatee's right to control his or her own social and sexual contacts and relationships.

(7) Decisions concerning the education of the limited conservatee.

The limited conservator shall secure for the limited conservatee such habilitation or treatment, training, education, medical and psychological services, and social and vocational opportunity as appropriate and as will assist the limited conservatee in the development of maximum self-reliance and independence.

(b) Any limited conservator, the limited conservatee, or any relative or friend of the limited conservatee may apply by petition to the superior court of the county in which the proceedings are pending to have the limited conservatorship modified by the elimination or addition of any of the powers which must be specifically granted to the limited conservator pursuant to subdivision (a) above. The petition shall state the facts alleged to establish that the limited conservatorship should be modified. The granting or elimination of such powers shall be discretionary with the court. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) The limited conservator or any relative or friend of the limited conservatee may appear and oppose the petition. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil actions, including trial by jury if demanded. If any such powers are granted or eliminated, new letters of limited conservatorship shall be issued reflecting such change in the limited conservator's powers.

SEC. 70. Section 2405 of the Probate Code is amended to read:

2405. If there is a dispute relating to the estate between the guardian or conservator and a third person, the guardian or conservator, or the limited conservator to the extent specifically and expressly provided in the order appointing the limited conservator, may do either of the following:

(a) Enter into an agreement in writing with the third person to refer the dispute to a temporary judge designated in the agreement. The agreement shall be filed with the clerk, who shall thereupon, with the approval of the court, enter an order referring the matter to the designated person. The temporary judge shall proceed promptly to hear and determine the matter in controversy by summary procedure, without any pleadings, discovery, or jury trial. The decision of the temporary judge shall be subject to Section 632

of the Code of Civil Procedure. Judgment shall be entered on the decision and shall be as valid and effective as if rendered by a judge of the court in an action against the guardian or conservator or the third person commenced by ordinary process.

(b) Enter into an agreement in writing with the third person that a judge of the court, pursuant to the agreement and with the written consent of the judge, both filed with the clerk within the time specified in Section 9257 for bringing an independent action on the matter in dispute, may hear and determine the dispute pursuant to the procedure provided in subdivision (a).

SEC. 71. Section 2406 of the Probate Code is amended to read:

2406. If there is a dispute relating to the estate between the guardian or conservator and a third person, the guardian or conservator may enter into an agreement in writing with the third person to submit the dispute to arbitration under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure. The agreement is not effective unless it has first been approved by the court and a copy of the approved agreement is filed with the court.

SEC. 72. Section 2453 of the Probate Code is amended to read:

2453. The guardian or conservator may deposit money belonging to the estate in an insured account in a financial institution in this state. Unless otherwise provided by court order, the money deposited under this section may be withdrawn without order of court. As used in this section, "insured account in a financial institution" has the meaning provided in Section 46.

SEC. 73. Section 2453.5 is added to the Probate Code, to read:

2453.5. Where a trust company is a guardian or conservator and in the exercise of reasonable judgment deposits money of the estate in any department of the corporation or association of which it is a part, it is chargeable with interest thereon at the rate of interest prevailing among banks of the locality on such deposits.

SEC. 74. Section 2455 of the Probate Code is amended to read:

2455. (a) A trust company serving as guardian or conservator may deposit securities that constitute all or part of the estate in a securities depository as provided in Section 775 of the Financial Code.

(b) If the securities have been deposited with a trust company pursuant to Section 2328 or Section 2454, the trust company may deposit the securities in a securities depository as provided in Section 775 of the Financial Code.

(c) The securities depository may hold securities deposited with it in the manner authorized by Section 775 of the Financial Code.

SEC. 75. Section 2456 of the Probate Code is amended to read:

2456. (a) Upon application of the guardian or conservator, the court may, with or without notice, order that money or other personal property be deposited pursuant to Section 2453 or 2454, and be subject to withdrawal only upon authorization of the court.

(b) The guardian or conservator shall deliver a copy of the court

order to the financial institution at the time the deposit is made.

(c) No financial institution accepting a deposit pursuant to Section 2453 or 2454 shall be on notice of the existence of an order that the money or other property is subject to withdrawal only upon authorization of the court unless it has actual notice of the order.

SEC. 76. Section 2525 of the Probate Code is amended to read:

2525. (a) Except as provided in subdivision (b), if a civil action is pending with respect to the subject matter of a petition filed pursuant to this article and jurisdiction has been obtained in the court where the civil action is pending prior to the filing of the petition, upon request of any party to the civil action, the court shall abate the petition until the conclusion of the civil action.

(b) The court need not abate the petition if the court determines that the civil action was filed for the purpose of delay.

SEC. 77. Section 2543 of the Probate Code is amended to read:

2543. (a) Sales may be at public auction or private sale, as the guardian or conservator deems best.

(b) Subject to Section 1469, unless otherwise specifically provided in this article, all proceedings concerning sales by guardians or conservators, giving notice of sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders authorizing sales, rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, and allowance of commissions, shall conform, as nearly as may be, to the provisions of this code concerning sales by administrators, other than the Independent Administration of Estates Act, Part 6 (commencing with Section 10400) of Division 7.

(c) The clerk of the court shall cause notice to be posted at the courthouse of the county where the proceedings described in subdivision (b) are pending only in the following cases:

(1) Where posting of notice of hearing is required on a petition for the confirmation of a sale of real or personal property of the estate.

(2) Where posting of notice of a sale governed by Section 10250 (sales of personal property) is required or authorized.

(3) In any case where posting of notice is ordered by the court.

SEC. 78. Section 2546 of the Probate Code is repealed.

SEC. 79. Section 2555 of the Probate Code is amended to read:

2555. The guardian or conservator may lease real property without authorization of the court when (a) the rental does not exceed one thousand five hundred dollars ($1,500) a month and the term does not exceed two years, or (b) regardless of the amount of the rental, when the lease is from month to month.

SEC. 80. Section 2574 of the Probate Code is amended to read:

2574. (a) Subject to subdivision (b), the guardian or conservator, without authorization of the court, may invest funds of the estate pursuant to this section in:

(1) Direct obligations of the United States, or of this state, having a maturity at the time of acquisition of not more than five years.

(2) United States Treasury bonds redeemable at par value on the death of the holder for payment of federal estate taxes, regardless of maturity date.

(3) Stocks, bonds, and other securities listed on an established stock or bond exchange in the United States which are purchased on such exchange.

(4) Eligible securities for the investment of surplus state moneys as provided for in Section 16430 of the Government Code.

(5) An interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant to Section 9.18 of Part 9 of Title 12 of the Code of Federal Regulations, the portfolios of which are limited to United States government obligations maturing not later than five years from the date of investment and to repurchase agreements fully collateralized by United States government obligations.

(6) Units of a common trust fund described in Section 1564 of the Financial Code. The common trust fund shall have as its objective investment primarily in short-term fixed income obligations and shall be permitted to value investments at cost pursuant to regulations of the appropriate regulatory authority.

(b) In making and retaining investments made under this section, the guardian or conservator shall take into consideration the circumstances of the estate, indicated cash needs, and, if reasonably ascertainable, the date of the prospective termination of the guardianship or conservatorship.

(c) Nothing in this section limits the authority of the guardian or conservator to seek court authorization for any investment, or to make other investments with court authorization, as provided in this division.

SEC. 81. Section 2580 of the Probate Code is amended to read:

2580. (a) The conservator or other interested person may file a petition under this article for an order of the court authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes:

(1) Benefiting the conservatee or the estate.

(2) Minimizing current or prospective taxes or expenses of administration of the conservatorship estate or of the estate upon the death of the conservatee.

(3) Providing gifts for such purposes, and to such charities, relatives (including the other spouse), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the conservatee.

(b) The action proposed in the petition may include, but is not limited to, the following:

(1) Making gifts of principal or income, or both, of the estate, outright or in trust.

(2) Conveying or releasing the conservatee's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by

the entirety.

(3) Exercising or releasing the conservatee's powers as donee of a power of appointment.

(4) Entering into contracts.

(5) Creating for the benefit of the conservatee or others, revocable or irrevocable trusts of the property of the estate, which trusts may extend beyond the conservatee's disability or life.

(6) Exercising options of the conservatee to purchase or exchange securities or other property.

(7) Exercising the rights of the conservatee to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:

(i) Life insurance policies, plans, or benefits.

(ii) Annuity policies, plans, or benefits.

(iii) Mutual fund and other dividend investment plans.

(iv) Retirement, profit sharing, and employee welfare plans and benefits.

(8) Exercising the right of the conservatee to elect to take under or against a will.

(9) Exercising the right of the conservatee to disclaim any interest that may be disclaimed under Division 2.5 (commencing with Section 260).

(10) Exercising the right of the conservatee (i) to revoke a revocable trust or (ii) to surrender the right to revoke a revocable trust, but the court shall not authorize or require the conservator to exercise the right to revoke a revocable trust if the instrument governing the trust (i) evidences an intent to reserve the right of revocation exclusively to the conservatee, (ii) provides expressly that a conservator may not revoke the trust, or (iii) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke the trust.

(11) Making an election referred to in Section 13502 or an election and agreement referred to in Section 13503.

SEC. 82. Section 2614 of the Probate Code is amended to read:

2614. (a) Within 30 days after the inventory and appraisement is filed, the guardian or conservator or any creditor or other interested person may file written objections to any or all appraisals. The clerk shall set the objections for hearing not less than 15 days after their filing.

(b) Notice of the hearing, together with a copy of the objections, shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. If the appraisal was made by a probate referee, the person objecting shall also mail notice of the hearing and a copy of the objection to the probate referee at least 15 days before the time set for the hearing.

(c) The court shall determine the objections and may fix the true value of any asset to which objection has been filed. For the purpose of this subdivision, the court may cause an independent appraisal or

appraisals to be made by at least one additional appraiser at the expense of the estate or, if the objecting party is not the guardian or conservator and the objection is rejected by the court, the court may assess the cost of any such additional appraisal or appraisals against the objecting party.

SEC. 83. Section 2631 of the Probate Code is amended to read:

2631. (a) Upon the death of the ward or conservatee, the guardian or conservator may contract for and pay a reasonable sum for the expenses of the last illness and the funeral of the deceased ward or conservatee, or may pay the unpaid expenses of such last illness and funeral, in full or in part, to the extent reasonable, from any assets of the deceased ward or conservatee, other than real property or any interest therein, which are under the control of the guardian or conservator.

(b) When a claim for such expenses is presented to the guardian or conservator, the guardian or conservator shall endorse thereon an allowance or rejection, with the date thereof. If the claim is allowed, it shall be presented to the court and the court shall in like manner endorse thereon an allowance or rejection. If the claim is approved by the court, the claim shall be filed with the clerk within 30 days thereafter.

(c) After payment of such expenses, the guardian or conservator may transfer any remaining assets as provided in Division 8 (commencing with Section 13000). For this purpose, the value of the property of the deceased ward or conservatee shall be determined after the deduction of the expenses so paid.

SEC. 84. Section 2652 of the Probate Code is repealed.

SEC. 85. Section 2652 is added to the Probate Code, to read:

2652. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 85.3. Section 6246 of the Probate Code is amended to read:

6246. In addition to the mandatory clauses contained in Section 6245, 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 relating to intestate succession.

(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 Article 2 (commencing with Section 16220) of Chapter 2 of Part 4 of Division 9 of the Probate Code. 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 advisers, accountants, tax advisers, 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 or the Uniform Transfers to Minors Act of any state.

(3) 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 are not 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) The trustee is 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.

SEC. 85.7. Section 6247 of the Probate Code is amended to read:

6247. (a) Except as specifically provided in 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.

(b) Sections 6205, 6206, and 6226 apply to every California statutory will, including those executed before January 1, 1985.

(c) Notwithstanding Section 6222 and except as provided in subdivision (b), a California statutory will is governed by the law that applied prior to January 1, 1985, if the California statutory will is executed on or after January 1, 1985, on a form that (1) was prepared for use under former Sections 56 to 56.14, inclusive, of the Probate Code and (2) satisfied the requirements of law that applied prior to

January 1, 1985.

(d) A California statutory will does not fail to satisfy the requirement of subdivision (a) merely because the will is executed on a form that incorporates the mandatory clauses of Section 6246 that refer to former Section 1120.2. If the will incorporates the mandatory clauses with a reference to former Section 1120.2, the trustee has the powers listed in Article 2 (commencing with Section 16220) of Chapter 2 of Part 4 of Division 9.

SEC. 86. Section 6327 of the Probate Code is amended to read:

6327. An appeal may be taken from any of the following:

(a) Any order described in Section 1297 made pursuant to this chapter.

(b) An order making or refusing to make a determination specified in paragraph (1), (2), or (8) of subdivision (a) of Section 6325.

(c) As provided in Section 17207 for an order made pursuant to Section 6326.

SEC. 87. Section 6501 of the Probate Code is amended to read:

6501. A petition for an order under Section 6500 may be filed by any interested person. Notice of the hearing on the petition shall be given as provided in Section 1220.

SEC. 88. Section 6511 of the Probate Code is amended to read:

6511. A petition for an order under Section 6510 may be filed by any interested person. Notice of the hearing on the petition shall be given as provided in Section 1220.

SEC. 89. Section 6525 of the Probate Code is amended to read:

6525. A petition to select and set apart a probate homestead may be filed by any interested person. Notice of the hearing on the petition shall be given as provided in Section 1220.

SEC. 90. Section 6527 of the Probate Code is amended to read:

6527. (a) The court may by order modify the term or conditions of the probate homestead right or terminate the probate homestead right at any time prior to entry of a final decree of distribution of the decedent's estate if in the court's discretion to do so appears appropriate under the circumstances of the case.

(b) A petition for an order under this section may be filed by any of the following:

(1) The person for whose use the probate homestead is set apart.

(2) The testate or intestate successors of the decedent or other successors to the property set apart as a probate homestead.

(3) Persons having claims secured by liens or encumbrances on the property set apart as a probate homestead.

(c) Notice of the hearing on the petition shall be given to all the persons listed in subdivision (b) as provided in Section 1220.

SEC. 91. Section 6541 of the Probate Code is amended to read:

6541. (a) The court may grant or modify a family allowance on petition of any interested person.

(b) With respect to an order for the family allowance provided for in subdivision (a) of Section 6540:

(1) Before the inventory is filed, the order may be made or modified either (A) ex parte or (B) after notice of the hearing on the petition has been given as provided in Section 1220.

(2) After the inventory is filed, the order may be made or modified only after notice of the hearing on the petition has been given as provided in Section 1220.

(c) An order for the family allowance provided in subdivision (b) of Section 6540 may be made only after notice of the hearing on the petition has been given as provided in Section 1220 to all of the following:

(1) Each known heir whose interest in the estate is affected by the petition.

(2) Each known devisee whose interest in the estate is affected by the petition.

(3) All persons (or their attorneys if they have appeared by attorney) who have requested special notice as provided in Section 1250 or who have given notice of appearance in person or by attorney.

SEC. 92. Section 6607 of the Probate Code is amended to read:

6607. (a) Where proceedings for the administration of the estate of the decedent are not pending when the petition is filed under this chapter and the petition under this chapter is not joined with a petition for the probate of the decedent's will or for administration of the estate of the decedent, the petitioner shall give notice of the hearing by mail not less than 15 days before the hearing to each heir and devisee of the decedent, and to each person named as executor who is not petitioning, if known to the petitioner. A copy of the petition shall be sent with this notice of hearing to the surviving spouse, each child, and each devisee who is not petitioning.

(b) If the petition under this chapter is filed with a petition for the probate of the decedent's will, notice of the hearing on the petition under this chapter shall be given to the persons and in the manner prescribed by Sections 327 and 328 and shall be included in the notice of hearing required by those sections. If the petition filed under this chapter is filed with a petition for administration of the estate of the deceased spouse, notice of the hearing on the petition shall be given to the persons and in the manner prescribed by Section 441 and shall be included in the notice required by that section.

(c) If proceedings for the administration of the estate of the decedent are pending when the petition is filed under this chapter and the hearing of the petition for probate of the will or administration of the estate of the decedent is set for a day more than 15 days after the filing of the petition filed under this chapter, the petition under this chapter shall be set for hearing at the same time as the petition for probate of the will or for administration of the estate, and notice of hearing on the petition filed under this chapter shall be given by the petitioner as provided in Section 1220. If the hearing of the petition for probate of the will or for administration of the estate is not set for hearing for a day more than 15 days after

the filing of the petition under this chapter, (1) the petition filed under this chapter shall be set for hearing at least 15 days after the date on which it is filed, (2) notice of the hearing on the petition filed under this chapter shall be given by the petitioner as provided in Section 1220, and (3) if the petition for probate of the will or for administration of the estate has not already been heard, that petition shall be continued until that date and heard at the same time unless the court otherwise orders.

SEC. 92.5. Section 6611 of the Probate Code is amended to read:

6611. (a) Subject to the limitations and conditions specified in this section, the person or persons in whom title vested pursuant to Section 6609 are personally liable for the unsecured debts of the decedent.

(b) The personal liability of a person under this section shall not exceed the fair market value at the date of the decedent's death of the property title to which vested in that person pursuant to Section 6609, less the total of all of the following:

(1) The amount of any liens and encumbrances on that property.

(2) The value of any probate homestead interest set apart under Section 6520 out of that property.

(3) The value of any other property set aside under Section 6510 out of that property.

(c) The personal liability under this section ceases one year after the date the court makes its order under Section 6609, except with respect to an action or proceeding then pending in court.

(d) In any action or proceeding based upon an unsecured debt of the decedent, the surviving spouse of the decedent, the child or children of the decedent, or the guardian of the minor child or children of the decedent, may assert any defense, cross-complaint, or setoff which would have been available to the decedent if the decedent had not died.

(e) If proceedings are commenced in this state for the administration of the estate of the decedent and the time for filing claims has commenced, any action upon the personal liability of a person under this section is barred to the same extent as provided for claims under Part 4 (commencing with Section 9000) of Division 7, except as to the following:

(1) Creditors who commence judicial proceedings for the enforcement of the debt and serve the person liable under this section with the complaint therein prior to the expiration of the time for filing claims.

(2) Creditors who have or who secure an acknowledgment in writing of the person liable under this section that that person is liable for the debts.

(3) Creditors who file a timely claim in the proceedings for the administration of the estate of the decedent.

SEC. 93. Division 7 (commencing with Section 7000) is added to the Probate Code, to read:

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 1. GENERAL PROVISIONS

PART 2. OPENING ESTATE ADMINISTRATION

PART 3. INVENTORY AND APPRAISAL

PART 4. CREDITOR CLAIMS

CHAPTER 1. GENERAL PROVISIONS

9000. As used in this division:

(a) "Claim" means a demand for payment for any of the following, whether due, not due, or contingent, and whether liquidated or unliquidated:

(1) Liability of the decedent, whether arising in contract, tort, or otherwise.

(2) Liability for taxes incurred before the decedent's death, whether assessed before or after the decedent's death, other than property taxes and assessments secured by real property liens.

(3) Liability of the estate for funeral expenses of the decedent.

(b) "Claim" does not include a dispute regarding title of a decedent to specific property alleged to be included in the decedent's estate.

9001. (a) The publication or posting of notice under Section 333 and the giving of notice of administration of the estate of the decedent under Chapter 2 (commencing with Section 9050) constitute notice to creditors of the requirements of this part.

(b) Nothing in subdivision (a) affects a notice or request to a public entity required by Chapter 5 (commencing with Section 9200).

9002. Except as otherwise provided by statute:

(a) All claims shall be filed in the manner and within the time provided in this part.

(b) A claim that is not filed as provided in this part is barred.

(c) The holder of a claim may not maintain an action on the claim unless the claim is first filed as provided in this part.

9003. A claim that is established under this part shall be included among the debts to be paid in the course of administration.

9004. (a) This part applies in any proceeding for administration of a decedent's estate commenced on or after July 1, 1988.

(b) The applicable law in effect before July 1, 1988, governing the subject matter of this part continues to apply in any proceeding for administration of a decedent's estate commenced before July 1, 1988, notwithstanding its repeal by the act that enacted this section.

CHAPTER 2. NOTICE TO CREDITORS

9050. (a) If, within four months after the date letters are first issued to a general personal representative, the personal representative has knowledge of a creditor of the decedent, the personal representative shall give notice of administration of the estate to the creditor, subject to Section 9054. The notice shall be given as provided in Section 1215. For the purpose of this subdivision, a personal representative has knowledge of a creditor of the decedent if the personal representative is aware that the creditor has demanded payment from the decedent or the estate.

(b) The giving of notice under this chapter is in addition to the publication or posting of the notice under Section 333.

9051. (a) Except as provided in subdivision (b), the notice shall be given within four months after the date letters are first issued to a general personal representative.

(b) If the personal representative first has knowledge of a creditor less than 30 days before expiration of the time provided in subdivision (a), the notice shall be given within 30 days after the personal representative first has knowledge of the creditor.

9052. The notice shall be in substantially the following form:

NOTICE OF ADMINISTRATION OF

ESTATE OF _____, DECEDENT

Notice to creditors:

Administration of the estate of _____ (deceased) has been commenced by _____ (personal representative) in Estate No. _____ in the Superior Court of California, County of _____. You must file your claim with the court and mail or deliver a copy to the personal representative within four months after _____ (the date letters were issued to the personal representative), or 30 days after the date this notice was mailed to you or, in the case of personal delivery, 30 days after the date this notice was delivered to you, whichever is later, as provided in Section 9100 of the California Probate Code. A claim form may be obtained from the court clerk. For your protection, you are encouraged to file your claim by certified mail, with return receipt requested.

_____ _____

(Date of mailing this notice) (Name and address of personal representative or attorney)

9053. (a) If the personal representative or attorney for the personal representative in good faith believes that notice to a particular creditor is or may be required by this chapter and gives notice based on that belief, the personal representative or attorney is not liable to any person for giving the notice, whether or not

required by this chapter.

(b) If the personal representative or attorney for the personal representative in good faith fails to give notice required by this chapter, the personal representative or attorney is not liable to any person for the failure. Liability, if any, for the failure in such a case is on the estate.

(c) Nothing in this chapter imposes a duty on the personal representative or attorney for the personal representative to make a search for creditors of the decedent.

9054. Notwithstanding Section 9050, the personal representative need not give notice to a creditor even though the personal representative has knowledge of the creditor if any of the following conditions is satisfied:

(a) The creditor has filed a claim as provided in this part.

(b) The creditor has demanded payment and the personal representative elects to treat the demand as a claim under Section 9154.

CHAPTER 3. TIME FOR FILING CLAIMS

9100. (a) A creditor shall file a claim before expiration of the later of the following times:

(1) Four months after the date letters are first issued to a general personal representative.

(2) Thirty days after the date notice of administration is given to the creditor, if notice is given within the time provided in Section 9051.

(b) Notwithstanding Section 9103, a reference in another statute to the time for filing a claim means the time provided in this section, unless the provision or context requires otherwise.

9101. A vacancy in the office of the personal representative that occurs before expiration of the time for filing a claim does not extend the time.

9102. A claim that is filed before expiration of the time for filing the claim is timely even if acted on by the personal representative or by the court after expiration of the time.

9103. (a) Upon petition by a creditor, the court may allow a claim to be filed after expiration of the time for filing a claim if it appears by clear and convincing evidence that all of the following conditions are satisfied:

(1) The creditor was out of the state during the entire four-month period after the date letters were first issued to a general personal representative.

(2) The creditor did not have knowledge of the administration of the estate within four months after the date letters were first issued to a general personal representative by reason of being out of the state.

(3) The claim does not arise out of the creditor's conduct of a trade, business, or profession in the state.

(b) The court shall not allow a claim to be filed under this section after the earlier of the following times:

(1) The time the court makes an order for final distribution of the estate.

(2) One year after the date letters are first issued to a general personal representative.

(c) Property distributed under court order and payments otherwise properly made before a claim is filed under this section are not subject to the claim, regardless of whether the claim is later established in whole or in part.

9104. (a) If a claim is filed within the time provided in this chapter, the creditor may later amend or revise the claim, subject to subdivision (b). The amendment or revision shall be filed in the same manner as the claim.

(b) An amendment or revision may not be made to increase the amount of the claim after the time for filing a claim has expired. An amendment or revision may not be made for any purpose after the earlier of the following times:

(1) The time the court makes an order for final distribution of the estate.

(2) One year after letters are first issued to a general personal representative.

CHAPTER 4. FILING OF CLAIMS

9150. (a) A claim may be filed by the creditor or a person acting on behalf of the creditor.

(b) A claim shall be filed with the court and a copy shall be mailed to the personal representative. Failure to mail a copy to the personal representative does not invalidate a properly filed claim, but any loss that results from the failure shall be borne by the creditor.

9151. (a) A claim shall be supported by the affidavit of the creditor or a person on behalf of the creditor stating:

(1) That the claim is a just claim.

(2) If the claim is due, the facts supporting the claim, the amount of the claim, and that all payments on and offsets to the claim have been credited.

(3) If the claim is not due or contingent, or the amount is not yet ascertainable, the facts supporting the claim.

(4) If the affidavit is made by a person other than the creditor, the reason it is not made by the creditor.

(b) The personal representative may require satisfactory vouchers or proof to be produced to support the claim. An original voucher may be withdrawn after a copy is provided, which shall be attached to the claim.

9152. (a) If a claim is based on a written instrument, either the original or a copy of the original with all endorsements shall be attached to the claim. If a copy is attached, the original instrument shall be exhibited to the personal representative or court or judge on

demand unless it is lost or destroyed, in which case the fact that it is lost or destroyed shall be stated in the claim.

(b) If the claim or a part of the claim is secured by a mortgage, deed of trust, or other lien that is recorded in the office of the recorder of the county in which the property subject to the lien is situated, it is sufficient to describe the mortgage, deed of trust, or lien and refer to the date or volume and page of its record.

9153. (a) The Judicial Council may prescribe a form for the claim. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements of this chapter.

(b) A claim form adopted by the Judicial Council shall inform the creditor that the claim must be filed with the court and a copy mailed or delivered to the personal representative. The claim form shall include a proof of mailing or delivery of a copy of the claim to the personal representative, which may be completed by the creditor.

9154. Notwithstanding any other provision of this part, if a creditor makes a written demand for payment within four months after the date letters are first issued to a general personal representative, the personal representative may waive formal defects and elect to treat the demand as a claim that is filed and established under this part by paying the amount demanded before the expiration of 30 days after the four-month period if all of the following conditions are satisfied:

(a) The debt was justly due.

(b) The debt was paid in good faith.

(c) The amount paid was the true amount of the indebtedness over and above all payments and offsets.

(d) The estate is solvent.

CHAPTER 5. CLAIMS BY PUBLIC ENTITIES

9200. (a) Except as provided in this chapter, a claim by a public entity shall be filed within the time otherwise provided in this part. A claim not so filed is barred, including any lien imposed for the claim.

(b) As used in this chapter, "public entity" has the meaning provided in Section 811.2 of the Government Code, and includes an officer authorized to act on behalf of the public entity.

9201. (a) Notwithstanding any other provision of this part, if a claim of a public entity arises under a law, act, or code listed in subdivision (b):

(1) The public entity may use a form as is necessary to effectively administer the law, act, or code. Where appropriate, the form may require the decedent's social security number, if known.

(2) The claim is barred only after written notice or request to the public entity and expiration of the period provided in the applicable section. If no written notice or request is made, the claim is enforceable by the remedies, and is barred at the time, otherwise provided in the law, act, or code.

(b)

Law, Act, or Code	Applicable Section
Sales and Use Tax Law commencing with Section 6001 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Motor Vehicle Fuel License Tax Law (commencing with Section 7301 of the Revenue and Taxation Code)	Section 7675.1 of the Revenue and Taxation Code
Use Fuel Tax Law (commencing with Section 8601 of the Revenue and Taxation Code)	Section 8782.1 of the Revenue and Taxation Code
Personal Income Tax Law (commencing with Section 17001 of the Revenue and Taxation Code)	Section 19266 of the Revenue and Taxation Code
Cigarette Tax Law (commencing with Section 30001 of the Revenue and Taxation Code)	Section 30207.1 of the Revenue and Taxation Code
Alcoholic Beverage Tax Law (commencing with Section 32001 of the Revenue and Taxation Code)	Section 32272.1 of the Revenue and Taxation Code
Unemployment Insurance Code	Section 1090 of the Unemployment

	Insurance Code
State Hospitals for the Mentally Disordered (commencing with Section 7200 of the Welfare and Institutions Code)	Section 7277.1 of the Welfare and Institutions Code
Medi-Cal Act (commencing with Section 14000 of the Welfare and Institutions Code)	Section 9202 of the Probate Code
Waxman-Duffy Prepaid Health Plan Act (commencing with Section 14200 of the Welfare and Institutions Code)	Section 9202 of the Probate Code

9202. Not later than 90 days after the date letters are first issued to a general personal representative, the general personal representative shall give the Director of Health Services notice of the decedent's death in the manner provided in Section 215 if the general personal representative knows or has reason to believe that the decedent received health care under the provisions of 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. The director has four months after notice is given in which to file a claim.

9203. (a) Failure of a person to give the written notice or request required by this chapter does not affect the validity of any proceeding under this division.

(b) If property in the estate is distributed before expiration of the time allowed a public entity to file a claim, the public entity has a claim against the distributees to the full extent of the public entity's claim, or each distributee's share of the distributed property, whichever is less. The public entity's claim against distributees includes interest at a rate equal to that earned in the Pooled Money Investment Account, Article 4.5 (commencing with Section 16480) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, from the date of distribution or the date of filing the claim by the public entity, whichever is later, plus other accruing costs as in the case of enforcement of a money judgment.

9204. Nothing in this chapter shall be construed to affect the order of priority of claims provided for under other provisions of law.

9205. This chapter does not apply to liability for the restitution of amounts illegally acquired through the means of a fraudulent, false, or incorrect representation, or a forged or unauthorized endorsement.

CHAPTER 6. ALLOWANCE AND REJECTION OF CLAIMS

9250. (a) When a claim is filed, the personal representative shall allow or reject the claim in whole or in part.

(b) The allowance or rejection shall be in writing. The personal representative shall file the allowance or rejection with the court clerk and give notice to the creditor as provided in Section 1215, together with a copy of the allowance or rejection.

(c) The allowance or rejection shall contain the following information:

(1) The name of the creditor.

(2) The total amount of the claim.

(3) The date of issuance of letters.

(4) The date of the decedent's death.

(5) The estimated value of the decedent's estate.

(6) The amount allowed or rejected by the personal representative.

(7) Whether the personal representative is authorized to act under the Independent Administration of Estates Act.

(8) A statement that the creditor has three months in which to act on a rejected claim.

(d) The Judicial Council may prescribe an allowance or rejection form, which may be part of the claim form. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements of this section.

9251. If the personal representative is not authorized to act under the Independent Administration of Estates Act:

(a) Immediately on the filing of the allowance of a claim, the clerk shall present the claim and allowance to the court or judge for approval or rejection.

(b) On presentation of a claim and allowance, the court or judge may, in its discretion, examine the creditor and others on oath and receive any evidence relevant to the validity of the claim. The court or judge shall endorse on the claim whether the claim is approved or rejected and the date.

9252. (a) If the personal representative or the attorney for the personal representative is a creditor of the decedent, the clerk shall present the claim to the court or judge for approval or rejection. The court or judge may in its discretion require the creditor to file a petition and give notice of hearing.

(b) If the court or judge approves the claim, the claim is established and shall be included with other established claims to be paid in the course of administration.

(c) If the court or judge rejects the claim, the personal representative or attorney may bring an action against the estate. Summons shall be served on the judge, who shall appoint an attorney at the expense of the estate to defend the action.

9253. (a) The filing of a claim tolls the statute of limitations otherwise applicable to the claim until notice of allowance, approval,

or rejection.

(b) A claim barred by the statute of limitations may not be allowed by the personal representative or approved by the court or judge.

(c) The allowance or approval of a claim in whole or in part further tolls the statute of limitations as to the part allowed or approved during the administration of the estate.

(d) Whether the statute of limitations otherwise applicable to a claim will expire before or after the time prescribed in Section 9257, an action on a rejected claim shall be commenced within the time prescribed in Section 9257.

9254. (a) The validity of an allowed or approved claim may be contested by any interested person at any time before settlement of the report or account of the personal representative in which it is first reported as an allowed or approved claim. The burden of proof is on the contestant, except where the personal representative has acted under the Independent Administration of Estates Act, in which case the burden of proof is on the personal representative.

(b) Subdivision (a) does not apply to a claim established by a judgment.

9255. (a) The personal representative may allow a claim, or the court or judge may approve a claim, in part. The allowance or approval shall state the amount for which the claim is allowed or approved.

(b) A creditor who refuses to accept the amount allowed or approved in satisfaction of the claim may bring an action on the claim in the manner provided in Section 9257. The creditor may not recover costs in the action unless the creditor recovers an amount greater than that allowed or approved.

9256. If within 30 days after a claim is filed the personal representative or the court or judge has refused or neglected to act on the claim, the refusal or neglect may, at the option of the creditor, be deemed equivalent to giving a notice of rejection on the 30th day.

9257. (a) A rejected claim is barred unless the creditor brings an action on the claim or the matter is referred to a referee or to arbitration within the following times, excluding the time during which there is a vacancy in the office of the personal representative:

(1) If the claim is due at the time the notice of rejection is given, three months after the notice is given.

(2) If the claim is not due at the time the notice of rejection is given, three months after the claim becomes due.

(b) In addition to any other county in which an action may be brought, an action on the claim may be brought in the county in which the proceeding for administration of the decedent's estate is pending.

(c) The plaintiff shall file a notice of the pendency of the action with the court clerk in the estate proceeding, together with proof of giving a copy of the notice to the personal representative as provided in Section 1215. Personal service of a copy of the summons and

complaint on the personal representative is equivalent to the filing and giving of the notice. Any property distributed under court order, or any payment properly made, before the notice is filed and given is not subject to the claim. The personal representative, distributee, or payee is not liable on account of the prior distribution or payment.

(d) The prevailing party in the action shall be awarded court costs and, if the court determines that the prosecution or defense of the action against the prevailing party was unreasonable, the prevailing party shall be awarded reasonable litigation expenses, including attorney's fees.

CHAPTER 7. CLAIMS ESTABLISHED BY JUDGMENT

9300. (a) Except as provided in Section 9303, after the death of the decedent all money judgments against the decedent or against the personal representative on a claim against the decedent or estate are payable in the course of administration and are not enforceable against property in the estate of the decedent under the Enforcement of Judgments Law.

(b) Subject to Section 9301, a judgment referred to in subdivision (a) shall be filed in the same manner as other claims.

9301. When a money judgment against a personal representative in a representative capacity becomes final, it conclusively establishes the validity of the claim for the amount of the judgment. The judgment shall provide that it is payable out of property in the decedent's estate in the course of administration. An abstract of the judgment shall be filed in the administration proceedings.

9302. (a) Notwithstanding the death of the decedent, a judgment for possession of property or a judgment for sale of property may be enforced under the Enforcement of Judgments Law. Nothing in this subdivision authorizes enforcement under the Enforcement of Judgments Law against any property in the estate of the decedent other than the property described in the judgment for possession or sale.

(b) After the death of the decedent, a demand for money that is not satisfied from the property described in a judgment for sale of property shall be filed as a claim in the same manner as other claims and is payable in the course of administration.

9303. If property of the decedent is subject to an execution lien at the time of the decedent's death, enforcement against the property may proceed under the Enforcement of Judgments Law to satisfy the judgment. The levying officer shall account to the personal representative for any surplus. If the judgment is not satisfied, the balance of the judgment remaining unsatisfied is payable in the course of administration.

9304. (a) An attachment lien may be converted into a judgment lien on property in the estate subject to the attachment lien, with the same priority as the attachment lien, in either of the following cases:

(1) Where the judgment debtor dies after entry of judgment in an

action in which the property was attached.

(2) Where a judgment is entered after the death of the defendant in an action in which the property was attached.

(b) To convert the attachment lien into a judgment lien, the levying officer shall, after entry of judgment in the action in which the property was attached and before the expiration of the attachment lien, do one of the following:

(1) Serve an abstract of the judgment, and a notice that the attachment lien has become a judgment lien, on the person holding property subject to the attachment lien.

(2) Record or file in any office where the writ of attachment and notice of attachment are recorded or filed an abstract of the judgment and a notice that the attachment lien has become a judgment lien. If the attached property is real property, the plaintiff or the plaintiff's attorney may record the required abstract and notice with the same effect as if recorded by the levying officer.

(c) After the death of the decedent, any members of the decedent's family who were supported in whole or in part by the decedent may claim an exemption provided in Section 487.020 of the Code of Civil Procedure for property levied on under the writ of attachment if the right to the exemption exists at the time the exemption is claimed. The personal representative may claim the exemption on behalf of members of the decedent's family. The claim of exemption may be made at any time before the time the abstract and notice are served, recorded, or filed under subdivision (b) with respect to the property claimed to be exempt. The claim of exemption shall be made in the same manner as an exemption is claimed under Section 462.100 of the Code of Civil Procedure.

PART 5. ESTATE MANAGEMENT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Duties and Liabilities of Personal Representative

9600. (a) The personal representative has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The personal representative:

(1) Shall exercise a power to the extent that ordinary care and diligence require that the power be exercised.

(2) Shall not exercise a power to the extent that ordinary care and diligence require that the power not be exercised.

9601. (a) If a personal representative breaches a fiduciary duty, the personal representative is chargeable with any of the following that is appropriate under the circumstances:

(1) Any loss or depreciation in value of the decedent's estate

resulting from the breach of duty, with interest.

(2) Any profit made by the personal representative through the breach of duty, with interest.

(3) Any profit that would have accrued to the decedent's estate if the loss of profit is the result of the breach of duty.

(b) If the personal representative has acted reasonably and in good faith under the circumstances as known to the personal representative, the court, in its discretion, may excuse the personal representative in whole or in part from liability under subdivision (a) if it would be equitable to do so.

9602. If the personal representative is liable for interest pursuant to Section 9601, the personal representative is liable for the greater of the following amounts:

(a) The amount of interest that accrues at the legal rate on judgments.

(b) The amount of interest actually received.

9603. The provisions of Sections 9601 and 9602 for liability of a personal representative for breach of a fiduciary duty do not prevent resort to any other remedy available against the personal representative under the statutory or common law.

9604. No personal representative is chargeable upon a special promise to answer in damages for a liability of the decedent or to pay a debt of the decedent out of the personal representative's own estate unless the agreement for that purpose, or some memorandum or note thereof, is in writing and is signed by one of the following:

(a) The personal representative.

(b) Some other person specifically authorized by the personal representative in writing to sign the agreement or the memorandum or note.

Article 2. Court Supervision

9610. Unless this part specifically provides a proceeding to obtain court authorization or requires court authorization, the powers and duties set forth in this part may be exercised by the personal representative without court authorization, instruction, approval, or confirmation. Nothing in this section precludes the personal representative from seeking court authorization, instructions, approval, or confirmation.

9611. (a) In all cases where no other procedure is provided by statute, upon petition of the personal representative, the court may authorize and instruct the personal representative, or approve and confirm the acts of the personal representative, in the administration, management, investment, disposition, care, protection, operation, or preservation of the estate, or the incurring or payment of costs, fees, or expenses in connection therewith. Section 9613 does not preclude a petition for instructions under this section.

(b) Notice of the hearing on the petition shall be given as

provided in Section 1220.

9612. When a judgment or order made pursuant to this division becomes final, it releases the personal representative and the sureties from all claims of the heirs or devisees and of any persons affected thereby based upon any act or omission directly authorized, approved, or confirmed in the judgment or order. For the purposes of this section, "order" includes an order settling an account of the personal representative, whether an interim or final account.

9613. (a) On petition of any interested person, and upon a showing that if the petition is not granted the estate will suffer great or irreparable injury, the court may direct the personal representative to act or not to act concerning the estate. The order may include such terms and conditions as the court determines to be appropriate under the circumstances.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

Article 3. Summary Determination of Disputes

9620. If there is a dispute relating to the estate between the personal representative and a third person, the personal representative may do either of the following:

(a) Enter into an agreement in writing with the third person to refer the dispute to a temporary judge designated in the agreement. The agreement shall be filed with the clerk, who shall thereupon, with the approval of the court, enter an order referring the matter to the designated person. The temporary judge shall proceed promptly to hear and determine the matter in controversy by summary procedure, without pleadings or discovery. The decision of the designated person shall be subject to Section 632 of the Code of Civil Procedure. Judgment shall be entered on the decision and shall be as valid and effective as if rendered by a judge of the court in an action against the personal representative or the third person commenced by ordinary process.

(b) Enter into an agreement in writing with the third person that a judge, pursuant to the agreement and with the written consent of the judge, both filed with the clerk within the time specified in Section 9257 for bringing an independent suit on the matter in dispute, may hear and determine the dispute pursuant to the procedure provided in subdivision (a).

9621. If there is a dispute relating to the estate between the personal representative and a third person, the personal representative may enter into an agreement in writing with the third person to submit the dispute to arbitration under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure. The agreement is not effective unless it is first approved by the court and a copy of the approved agreement is filed with the court. Notice of the hearing on the petition for approval of the agreement shall be given as provided in Section 1220 unless the

court, upon a showing of good cause, orders that notice be given for a shorter period or that notice be dispensed with. The order approving the agreement may be made ex parte.

Article 4. Joint Personal Representatives

9630. (a) Subject to subdivisions (b), (c), and (d):

(1) Where there are two personal representatives, both must concur to exercise a power.

(2) Where there are more than two personal representatives, a majority must concur to exercise a power.

(b) If one of the joint personal representatives dies or is removed or resigns, the powers and duties continue in the remaining joint personal representatives as if they were the only personal representatives until further appointment is made by the court.

(c) Where joint personal representatives have been appointed and one or more are (1) absent from the state and unable to act, or (2) otherwise unable to act, or (3) legally disqualified from serving, the court may, by order made with or without notice, authorize the remaining joint personal representatives to act as to all matters embraced within its order.

(d) Where there are two or more personal representatives, any of them may:

(1) Oppose a petition made by one or more of the other personal representatives or by any other person.

(2) Petition the court for an order requiring the personal representatives to take a specific action for the benefit of the estate or directing the personal representatives not to take a specific action. If a procedure is provided by statute for a petition to authorize the specific action by the personal representatives, the petitioner shall file the petition under the provision relating to that procedure. Otherwise, the petitioner shall file the petition under Section 9611.

9631. (a) Except as provided in subdivision (b), where there is more than one personal representative, one personal representative is not liable for a breach of fiduciary duty committed by another of the personal representatives.

(b) Where there is more than one personal representative, one personal representative is liable for a breach of fiduciary duty committed by another of the personal representatives under any of the following circumstances:

(1) Where the personal representative participates in a breach of fiduciary duty committed by the other personal representative.

(2) Where the personal representative improperly delegates the administration of the estate to the other personal representative.

(3) Where the personal representative approves, knowingly acquiesces in, or conceals a breach of fiduciary duty committed by the other personal representative.

(4) Where the personal representative's negligence enables the other personal representative to commit a breach of fiduciary duty.

(5) Where the personal representative knows or has information from which the personal representative reasonably should have known of the breach of fiduciary duty by the other personal representative and fails to take reasonable steps to compel the other personal representative to redress the breach.

(c) The liability of a personal representative for a breach of fiduciary duty committed by another of the personal representatives that occurred before July 1, 1988, is governed by prior law and not by this section.

Article 5. Independent Administration

9640. Nothing in this part limits or restricts the authority given the personal representative under Part 6 (commencing with Section 10400) (Independent Administration of Estates Act) if the personal representative has been given the authority to administer the estate under that part.

Article 6. Transitional Provision

9645. (a) Subject to subdivisions (b) and (c), any petition or other matter filed or commenced before July 1, 1988, shall be continued under this part, so far as applicable, except where the court determines that application of a particular provision of this part would substantially interfere with the rights of the parties or other interested persons, in which case the particular provision of this part does not apply and the applicable law in effect before July 1, 1988, applies.

(b) Nothing in this part affects any order, judgment, or decree made, or any action taken, before July 1, 1988.

(c) Notwithstanding the enactment of this part:

(1) An order, judgment, or decree made before July 1, 1988, shall continue in full force and effect in accordance with its term or until modified or terminated by the court.

(2) The validity of an order, judgment, or decree made before July 1, 1988, is determined by the applicable law in effect before July 1, 1988, and not by this part.

(3) The validity of any action taken before July 1, 1988, is determined by the applicable law in effect before July 1, 1988, and not by this part.

CHAPTER 2. ESTATE MANAGEMENT GENERALLY

9650. (a) Except as provided by statute and subject to subdivision (c):

(1) The personal representative has the right to, and shall take possession or control of, all the estate of the decedent to be administered in the decedent's estate and shall collect all debts due to the decedent or the estate. The personal representative is not

accountable for any debts that remain uncollected without his or her fault.

(2) The personal representative is entitled to receive the rents, issues, and profits from the real and personal property in the estate until the estate is settled or delivered over by order of court to the heirs or devisees.

(b) The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in his or her possession.

(c) Real property or tangible personal property may be left with or surrendered to the person presumptively entitled to it unless or until, in the judgment of the personal representative, possession of the property by the personal representative will be necessary for purposes of administration. The person holding the property shall surrender it to the personal representative on request by the personal representative.

9651. (a) A personal representative who in good faith takes into his or her possession real or personal property, and reasonably believes that the property is part of the estate of the decedent, is not:

(1) Criminally liable for so doing.

(2) Civilly liable to any person for so doing.

(b) The personal representative shall make reasonable efforts to determine the true nature of, and title to, the property so taken into possession.

(c) During his or her possession, the personal representative is entitled to receive all rents, issues, and profits of the property. If the property is later determined not to be part of the estate of the decedent, the personal representative shall deliver the property, or cause it to be delivered, to the person legally entitled to it, together with all rents, issues, and profits of the property received by the personal representative, less any expenses incurred in protecting and maintaining the property and in collecting rents, issues, and profits. The personal representative may request court approval before delivering the property pursuant to this subdivision.

(d) The court may award the personal representative and the personal representative's attorney reasonable compensation for services rendered in connection with the duties specified in this section as to property later determined not to be part of the estate of the decedent, if the court makes one of the following findings:

(1) That the services were of benefit to the estate. In such case, the compensation shall be a proper expense of administration.

(2) That the services were essential to preserve, protect, and maintain the property. In such case, the court shall award compensation as an expense deductible from the rents, issues, and profits received by the personal representative, or, if these are insufficient, as a lien against the property.

9652. (a) Except as provided in subdivisions (b) and (c), the personal representative shall keep all cash in his or her possession invested in interest-bearing accounts or other investments

authorized by law.

(b) The requirement of subdivision (a) does not apply to the amount of cash that is reasonably necessary for orderly administration of the estate.

(c) The requirement of subdivision (a) does not apply to the extent that the testator's will otherwise provides.

9653. (a) On application of a creditor of the decedent or the estate, the personal representative shall commence and prosecute an action for the recovery of real or personal property of the decedent for the benefit of creditors if the personal representative has insufficient assets to pay creditors and the decedent during lifetime did either of the following:

(1) Made a conveyance of the property, or any right or interest in the property, that is fraudulent as to creditors under the Uniform Fraudulent Transfer Act, Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code.

(2) Made a gift of the property in view of death.

(b) A creditor making application under this section shall pay such part of the costs and expenses of the suit and attorney's fees, or give an undertaking to the personal representative for that purpose, as the personal representative and the creditor agree, or, absent an agreement, as the court or a judge thereof shall order.

(c) The property recovered under this section shall be sold for the payment of debts in the same manner as if the decedent had died seised or possessed of the property. The proceeds of the sale shall be applied first to payment of the costs and expenses of suit, including attorney's fees, and then to payment of the debts of the decedent in the same manner as other property in possession of the personal representative. After all the debts of the decedent have been paid, the remainder of the proceeds shall be paid to the person from whom the property was recovered. The property may be sold in its entirety or in such portion as necessary to pay the debts.

9654. The heirs or devisees may themselves, or jointly with the personal representative, maintain an action for possession of property or to quiet title to property against any person except the personal representative.

9655. With respect to a share of stock of a domestic or foreign corporation held in the estate, a membership in a nonprofit corporation held by the estate, or other property held in the estate, a personal representative may do any one or more of the following:

(a) Vote in person, and give proxies to exercise, any voting rights with respect to the share, membership, or other property.

(b) Waive notice of a meeting or give consent to the holding of a meeting.

(c) Authorize, ratify, approve, or confirm any action which could be taken by shareholders, members, or property owners.

9656. The personal representative may insure the property of the estate against damage or loss and may insure himself or herself against liability to third persons.

9657. The personal representative shall not make profit by the increase, nor suffer loss by the decrease or destruction without his or her fault, of any part of the estate.

CHAPTER 3. *DEPOSIT* OF MONEY AND PERSONAL PROPERTY WITH FINANCIAL INSTITUTIONS

9700. The personal representative may deposit money belonging to the estate in an insured account in a financial institution in this state. Unless otherwise provided by court order, the money may be withdrawn without order of the court.

9701. The personal representative may deposit personal property of the estate with a trust company for safekeeping. Unless otherwise provided by court order, the personal property may be withdrawn without order of the court.

9702. (a) A trust company serving as personal representative may deposit securities that constitute all or part of the estate in a securities depository as provided in Section 775 of the Financial Code.

(b) If securities have been deposited with a trust company by a personal representative pursuant to Section 9701, the trust company may deposit the securities in a securities depository as provided in Section 775 of the Financial Code.

(c) The securities depository may hold securities deposited with it in the manner authorized by Section 775 of the Financial Code.

9703. (a) Upon application of the personal representative, the court may, with or without notice, order that money or other personal property be deposited pursuant to Section 9700 or 9701 and be subject to withdrawal only upon authorization of the court.

(b) The personal representative shall deliver a copy of the court order to the financial institution or trust company at the time the deposit is made.

(c) No financial institution or trust company accepting a deposit pursuant to Section 9700 or 9701 shall be on notice of the existence of an order that the money or other property is subject to withdrawal only upon authorization of the court unless it has actual notice of the order.

9704. When a decree is rendered distributing money or personal property deposited pursuant to this chapter, the financial institution, trust company, or securities depository may deliver the property directly to the distributees and shall file receipts therefor with the clerk.

9705. (a) Subject to subdivision (b), where a trust company is a personal representative and in the exercise of reasonable judgment deposits money of the estate in an account in any department of the corporation or association of which it is a part, it is chargeable with interest thereon at the rate of interest prevailing among banks of the locality on such deposits.

(b) Where it is to the advantage of the estate, the amount of cash

that is reasonably necessary for orderly administration of the estate may be deposited in a checking account that does not earn interest which is maintained in a department of the corporation or association of which the trust company is a part.

CHAPTER 4. INVESTMENTS AND PURCHASE OF PROPERTY

9730. Pending settlement of the estate, the personal representative may invest money of the estate in possession of the personal representative in any one or more of the following:

(a) Direct obligations of the United States, or of the State of California, maturing not later than one year from the date of making the investment.

(b) An interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant of Section 9.18 of Part 9 of Title 12 of the Code of Federal Regulations, the portfolios of which are limited to United States government obligations maturing not later than five years from the date of investment and to repurchase agreements fully collateralized by United States government obligations.

(c) Units of a common trust fund described in Section 1564 of the Financial Code. The common trust fund shall have as its objective investment primarily in short term fixed income obligations and shall be permitted to value investments at cost pursuant to regulations of the appropriate regulatory authority.

9731. (a) Pending settlement of the estate, upon a showing that it is to the advantage of the estate, the court may order that money of the estate in possession of the personal representative be invested in securities of the United States or of this state.

(b) To obtain an order under this section, the personal representative or any interested person shall file a petition stating the types of securities that are proposed to be purchased and the advantage to the estate of the purchase.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

9732. (a) The court may order that money of the estate in possession of the personal representative be invested in any manner provided by the will if all of the following conditions are satisfied:

(1) The time for filing claims has expired.

(2) All uncontested claims have been paid or are sufficiently secured by mortgage or otherwise, or there is sufficient cash in the estate aside from the money to be invested to pay all uncontested claims, or the court is otherwise satisfied that all uncontested claims will be paid.

(3) The estate is not in a condition to be finally closed and distributed.

(b) To obtain an order under this section, the personal representative or any interested person shall file a petition showing

the general condition of the estate and the types of investments that are proposed to be made.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220. In addition, the petitioner shall cause notice of the hearing and a copy of the petition to be mailed to all known devisees of property which is proposed to be invested. Where the property proposed to be invested is devised to a trust or trustee, notice of the hearing and a copy of the petition shall be mailed to the trustee or, if the trustee has not yet been appointed, to the person nominated as trustee. Mailing pursuant to this subdivision shall be to the person's last known address as provided in Section 1220.

(d) If no objection has been filed by an interested person, the court may make an order authorizing or directing the personal representative to invest such portion of the money of the estate as the court deems advisable in the types of investments proposed in the petition and authorized by the will. If there is no objection by an interested person and no substantial reason why some or all of the investment powers given by the will should not be exercised, the court shall make the order. The order may be for a limited period or until the administration of the estate is completed. Upon petition of the personal representative or any interested person, the order may be renewed, modified, or terminated at any time.

9733. (a) Pending settlement of the estate or at the time of settlement of the estate, on petition of the personal representative or any interested person, the court may, upon good cause shown, order that the personal representative purchase an annuity from an insurer admitted to do business in this state to satisfy a devise of an annuity or other direction in the will for periodic payments to a devisee.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

9734. (a) If an asset of the estate consists of an option right, the personal representative may exercise the option after authorization by order of court upon a showing that the exercise would be to the advantage of the estate and would be in the best interest of the interested persons. The personal representative may use any funds or property in the estate to acquire the property covered by the option.

(b) A petition under this section may be filed by the personal representative or any interested person.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

9735. (a) After authorization by order of court, the personal representative may purchase securities or commodities required to perform an incomplete contract of sale where the decedent died having sold but not delivered securities or commodities not owned by the decedent. The court's order shall fix the terms and conditions of purchase.

(b) A petition under this section may be filed by the personal

representative or by any party to the contract. Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) No notice of hearing need be given when the maximum purchase price is fixed or when the securities or commodities are to be purchased on an established stock, bond, or commodity exchange.

9736. The personal representative may hold a security in the name of a nominee or in any other form without disclosure of the estate so that title to the security may pass by delivery.

9737. (a) If an estate by reason of owning securities also owns or receives subscription rights for the purchase of additional securities, the personal representative may exercise the subscription rights after authorization by order of court upon a showing that it is to the advantage of the estate.

(b) To obtain an order under this section, the personal representative or any interested person shall file a petition stating the nature of the subscription rights and the advantage to the estate of exercising them.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

CHAPTER 5. OPERATION OF DECEDENT'S BUSINESS

9760. (a) As used in this section, "decedent's business" means an unincorporated business or venture in which the decedent was engaged or which was wholly or partly owned by the decedent at the time of the decedent's death, but does not include a business operated by a partnership in which the decedent was a partner.

(b) If it is to the advantage of the estate and in the best interest of the interested persons, the personal representative, with or without court authorization, may continue the operation of the decedent's business; but the personal representative may not continue the operation of the decedent's business for a period of more than six months from the date letters are first issued to a personal representative unless a court order has been obtained under this section authorizing the personal representative to continue the operation of the business.

(c) The personal representative or any interested person may file a petition requesting an order (1) authorizing the personal representative to continue the operation of the decedent's business or (2) directing the personal representative to discontinue the operation of the decedent's business. The petition shall show the advantage to the estate and the benefit to the interested persons of the order requested. Notice of the hearing on the petition shall be given as provided in Section 1220.

(d) If a petition is filed under this section, the court may make an order that either:

(1) Authorizes the personal representative to continue the operation of the decedent's business to such an extent and subject to such restrictions as the court determines to be for the advantage of

the estate and in best interests of the interested persons.

(2) Directs the personal representative to discontinue the operation of the decedent's business within the time specified in, and in accordance with the provisions of, the order.

9761. If a partnership existed between the decedent and another person at the time of the decedent's death, on application of the personal representative, the court may order any surviving partner to render an account pursuant to Section 15043, 15510, or 15634 of the Corporations Code. An order under this section may be enforced by the court's power to punish for contempt.

9762. (a) After authorization by order of court upon a showing that it would be to the advantage of the estate and in the best interest of the interested persons, the personal representative may continue as a general or a limited partner in any partnership in which the decedent was a general partner at the time of death. In its order, the court may specify any terms and conditions of the personal representative's participation as a partner that the court determines are to the advantage of the estate and in the best interest of the interested persons, but any terms and conditions that are inconsistent with the terms of any written partnership agreement are subject to the written consent of all of the surviving partners.

(b) If there is a written partnership agreement permitting the decedent's personal representative to participate as a partner, the personal representative has all the rights, powers, duties, and obligations provided in the written partnership agreement, except as otherwise ordered by the court pursuant to subdivision (a).

(c) If there is not a written partnership agreement, the personal representative has the rights, powers, duties, and obligations that the court specifies in its order pursuant to subdivision (a).

(d) To obtain an order under this section, the personal representative or any interested person shall file a petition showing that the order requested would be to the advantage of the estate and in the best interest of the interested persons. Notice of the hearing on the petition shall be given as provided in Section 1220. In addition, unless the court otherwise orders, the petitioner, not less than 15 days before the hearing, shall cause notice of hearing and a copy of the petition to be mailed to each of the surviving general partners at his or her last known address.

9763. (a) If the decedent was a general partner, the personal representative may commence and maintain any action against the surviving partner that the decedent could have commenced and maintained.

(b) The personal representative may exercise the decedent's rights as a limited partner as provided in Section 15675 of the Corporations Code.

CHAPTER 6. ABANDONMENT OF TANGIBLE PERSONAL PROPERTY

9780. Unless the property is specifically devised, subject to the requirements of this chapter, the personal representative may dispose of or abandon tangible personal property where the cost of collecting, maintaining, and safeguarding the property would exceed its fair market value.

9781. Unless otherwise provided in the will, subject to the requirements of this chapter, the personal representative may exercise the power provided in Section 9780 without court authorization or approval.

9782. (a) Except as provided in Section 9785, before disposing of or abandoning property under Section 9780, the personal representative shall give notice of the proposed disposition or abandonment as provided in subdivision (c) to all of the following:

(1) Each known devisee whose interest in the estate is affected by the proposed action.

(2) Each known heir whose interest in the estate is affected by the proposed action.

(3) Each person who has filed a request for special notice pursuant to Section 1250.

(4) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the proposed action.

(b) The notice of the proposed disposition or abandonment shall describe the property to be disposed of or abandoned, indicate the manner in which the property is to be disposed of or abandoned, and specify the date on or after which the property will be disposed of or abandoned.

(c) The notice shall be delivered personally to each person required to be given notice or shall be sent by mail to the person at the person's last known address. If the notice is delivered personally, it shall be delivered to the person not less than five days before the date specified in the notice as the date on or after which the property will be disposed of or abandoned. If the notice is sent by mail, it shall be deposited in the mail not less than 10 days before the date specified in the notice as the date on or after which the property will be disposed of or abandoned.

9783. A person described in Section 9782 may deliver or mail a written objection to the disposition or abandonment to the personal representative on or before the date specified in the notice as the date on or after which the property will be disposed of or abandoned. Subject to Section 9788, after receipt of the written objection, the personal representative shall not dispose of or abandon the property without authorization by order of the court obtained under Section 9611.

9784. (a) A person described in Section 9782 who objects to the disposition or abandonment of property by the personal representative under Section 9780 may apply to the court having jurisdiction over the proceeding for an order restraining the personal

representative from disposing of or abandoning the property without prior court authorization.

(b) The court shall grant the requested order without requiring notice to the personal representative and without cause being shown for the order if the court is satisfied that the estate will not suffer any loss or unreasonable expense if the order is granted. As a condition of granting the order, the court may require the person applying for the order (1) to pay the costs of storing and protecting the property or (2) to provide security by bond or cash deposit that the costs will be paid.

(c) The personal representative is deemed to have notice of the restraining order if it is served upon the personal representative in the same manner as is provided for in Section 415.10 or 415.30 of the Code of Civil Procedure, or in the manner authorized by the court, before the date specified in the notice as the date on or after which the property will be disposed of or abandoned.

9785. Notice of the proposed disposition or abandonment need not be given to any of the following:

(a) Any person who consents in writing to the proposed disposition or abandonment.

(b) Any person who, in writing, waives the right to notice of the proposed disposition or abandonment.

9786. A person who objects to the disposition or abandonment as provided in Section 9783, or who serves a restraining order issued under Section 9784 in the manner provided in that section, shall be given notice of any court hearing on a petition for court authorization of the disposition or abandonment of the property.

9787. (a) Except as provided in subdivision (b), a person described in Section 9782 who receives notice of the proposed disposition or abandonment as provided in Section 9782, waives the right to have the court later review the disposition or abandonment of the property unless the person does one of the following:

(1) Delivers or mails a written objection as provided in Section 9783.

(2) Serves a restraining order obtained under Section 9784 before whichever of the following is the later time:

(A) The date specified in the notice of proposed disposition or abandonment as the date on or after which the property will be disposed of or abandoned.

(B) The date the property has actually been disposed of or abandoned.

(b) Subject to Section 9785, the court may review the disposition or abandonment of the property upon the motion of a person described in subdivision (a) of Section 9782 who establishes that he or she did not actually receive notice of the proposed disposition or abandonment before the time to object expired.

9788. (a) Notwithstanding Sections 9783 and 9784, the personal representative may abandon or dispose of the property without court authorization if the person who made the objection or obtained the

restraining order fails to take possession of the property at his or her expense within 10 days after the personal representative requests that the person do so.

(b) A person who takes possession of estate property pursuant to this section is liable for the safekeeping of the property until a court order is made relieving the person of this obligation.

CHAPTER 7. BORROWING, REFINANCING, AND ENCUMBERING PROPERTY

9800. (a) Subject to subdivision (c), after authorization by order of court obtained under this chapter upon a showing that it would be to the advantage of the estate, the personal representative may borrow money on a note, either unsecured or to be secured by a security interest or other lien on the personal property of the estate, or any part thereof, or to be secured by a mortgage or deed of trust on the real property of the estate, or any part thereof, and may give a security interest or other lien on the personal property of the estate, or any part thereof, or a mortgage or deed of trust on the real property of the estate, or any part thereof, in order to do any one or more of the following:

(1) Pay the debts of the decedent or the estate, devises made in the will of the decedent, and expenses and charges of administration.

(2) Pay, reduce, extend, or renew a security interest or lien or mortgage or deed of trust already existing on property of the estate.

(3) Improve, use, operate, or preserve property in the estate.

(b) The personal representative shall apply the money to the purpose specified in the order.

(c) Where the surviving spouse has elected to have his or her share of the community real property administered in the decedent's estate, the personal representative is authorized to borrow money to be secured by a mortgage or deed of trust on the real property of the estate, or any part thereof, only with the written consent of the surviving spouse.

9801. If property of the estate consists of an undivided interest in real or personal property, or any other interest therein less than the entire ownership, upon a showing that it would be to the advantage of the estate to borrow money to improve, use, operate, or preserve the property jointly with the owners of the other interests therein, or to pay, reduce, extend, or renew a security interest, lien, mortgage, or deed of trust already existing on all of the property, the personal representative, after authorization by order of the court obtained under this chapter, may join with the owners of the other interests in borrowing money and the execution of a joint and several note and such security interest, lien, mortgage, or deed of trust as may be required to secure the payment of the note. The note may be for such sum as is required for the purpose.

9802. (a) The personal representative or any interested person may file a petition for an order under this chapter.

(b) The petition shall state the purpose for which the order is sought and the necessity for or the advantage to accrue from the order. If applicable, the petition shall also show the amount of money proposed to be borrowed, the rate of interest to be paid, the length of time the note is to run, and a general description of the property proposed to be mortgaged or subjected to the deed of trust, security interest, or other lien.

9803. Notice of the hearing on the petition shall be given as provided in Section 1220.

9804. (a) Subject to subdivision (c), if the court is satisfied that it will be to the advantage of the estate, the court shall make an order that authorizes or requires that the personal representative do any one or more of the following:

(1) Borrow money and execute a note.

(2) Execute a mortgage or deed of trust or give other security by security interest or other lien.

(3) Pay, reduce, extend, or renew a security interest or lien or mortgage or deed of trust already existing upon property of the estate.

(b) The court in its order may do any one or more of the following:

(1) Order that a lesser amount than that specified in the petition be borrowed.

(2) Prescribe the maximum rate of interest and the period of the loan.

(3) Require that the interest and the whole or any part of the principal be paid from time to time out of the whole estate or any part thereof.

(4) Require that the personal property used as security, or any buildings on real property to be mortgaged or subjected to the deed of trust, be insured for the further security of the lender and that the premiums be paid out of the estate.

(5) Specify the purpose for which the money to be borrowed is to be applied.

(6) Specify the terms and conditions of any extension or renewal agreement.

(7) Prescribe such other terms and conditions concerning the transaction as the court determines to be to the advantage of the estate.

(c) Where the surviving spouse has elected to have his or her share of the community real property administered in the decedent's estate, an order authorizing or requiring the personal representative to borrow money to be secured by a mortgage or deed of trust upon the real property of the estate, or any part thereof, may be made only if the written consent of the surviving spouse has been filed with the court.

9805. (a) The personal representative shall execute and deliver the mortgage or deed of trust, or execute and deliver the instrument creating the security interest, setting forth therein that it is made by authority of the order, giving the date of the order.

(b) The note and the mortgage or deed of trust or other instrument creating the security interest, if any, shall be signed by the personal representative and shall be acknowledged by the personal representative if the instrument creates a lien on real property. The personal representative is not personally liable on the note or the mortgage or deed of trust or other instrument by reason of so signing.

9806. (a) Every mortgage, deed of trust, or security interest made pursuant to a court order obtained under this chapter is effectual to mortgage, or to subject to the deed of trust or security interest, both of the following:

(1) All right, title, and interest which the decedent had to the property described therein at the time of the decedent's death.

(2) Any right, title, or interest in the property acquired by the estate of the decedent, by operation of law or otherwise, since the time of the decedent's death.

(b) Jurisdiction of the court to administer the estate of the decedent shall be effectual to vest the court with jurisdiction to make the order for the note and for the security interest, lien, mortgage, or deed of trust. This jurisdiction shall conclusively inure to the benefit of the owner of the security interest or lien, mortgagee named in the mortgage, or the trustee and beneficiary named in the deed of trust, and their heirs and assigns.

(c) No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the note, security interest, lien, mortgage, or deed of trust given pursuant to an order under this chapter. Subject to Section 9807, the owner of the security interest or lien, the mortgagee named in the mortgage, or the trustee and beneficiary named in the deed of trust, and their heirs and assigns, have and possess the same rights and remedies on the note and the security interest or lien or mortgage or deed of trust as if it had been made by the decedent prior to his or her death.

9807. (a) Except as provided in subdivision (b), no judgment or claim for any deficiency shall be had or allowed against the personal representative or the estate if (1) there is a foreclosure or sale under a security interest, lien, mortgage, or deed of trust and (2) the proceeds of sale of the encumbered property are insufficient to pay the note, the security interest, lien, mortgage, or deed of trust, and the costs or expenses of sale.

(b) If the note, security interest, mortgage, or deed of trust was given to pay, reduce, extend, or renew a lien, mortgage, security interest, or deed of trust existing on property of the estate at the time of death of the decedent and the indebtedness secured thereby was an allowed and approved claim against the estate, the part of the indebtedness remaining unsatisfied shall be classed and paid with other allowed claims against the estate.

CHAPTER 8. ACTIONS AND PROCEEDINGS BY OR AGAINST PERSONAL REPRESENTATIVE

9820. The personal representative may:

(a) Commence and maintain actions and proceedings for the benefit of the estate.

(b) Defend actions and proceedings against the decedent, the personal representative, or the estate.

9822. The personal representative may bring an action on the bond of any former personal representative of the same estate, for the use and benefit of all interested persons.

9823. (a) If the decedent leaves an undivided interest in any property, an action for partition of the property may be brought against the personal representative.

(b) The personal representative may bring an action against the other cotenants for partition of any property in which the decedent left an undivided interest.

CHAPTER 9. COMPROMISE OF CLAIMS AND ACTIONS; EXTENSION, RENEWAL, OR MODIFICATION OF OBLIGATIONS

9830. (a) Unless this chapter or some other applicable statute requires court authorization or approval, if it is to the advantage of the estate, the personal representative may do any of the following withou court authorization, instruction, approval, or confirmation:

(1) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate, including the giving of a covenant not to sue.

(2) Extend, renew, or in any manner modify the terms of an obligation owing to or in favor of the decedent or the estate.

(3) Release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

(b) Nothing in this section precludes the personal representative from seeking court authorization pursuant to the provisions of this chapter.

(c) Upon petition of an interested person or upon the court's own motion, the court may limit the authority of the personal representative under subdivision (a). Notice of the hearing on the petition shall be given as provided in Section 1220.

9831. Unless the time for filing creditor's claims has expired, authorization by order of court is required for a compromise or settlement of a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate.

9832. (a) Except as provided in subdivision (b), authorization by order of court is required for a compromise, settlement, extension, renewal, or modification which affects any of the following:

(1) Title to real property.

(2) An interest in real property or a lien or encumbrance on real propert

(3) An option to purchase real property or an interest in real property.

(b) If it is to the advantage of the estate, the personal representative without prior court authorization may extend, renew, or modify a lease of real property having an unexpired term of one year or less where, under the lease as extended, renewed, or modified (1) the rental does not exceed one thousand five hundred dollars ($1,500) a month and the term does not exceed one year or (2) regardless of the amount of the rental, the lease is from month to month. For the purposes of this subdivision, if the lease gives the lessee the right to extend the term of the lease, the length of the term shall be considered as though the right to extend had been exercised.

9833. Authorization by order of court is required for a compromise or settlement of a matter when the transaction requires the transfer or encumbrance of property of the estate, or the creation of an unsecured liability of the estate, or both, in an amount or value in excess of twenty-five thousand dollars ($25,000).

9834. Authorization by order of court is required for any of the following:

(a) A compromise or settlement of a claim by the estate against the personal representative or the personal representative's attorney, whether or not the claim arises out of the administration of the estate.

(b) An extension, renewal, or modification of the terms of a debt or similar obligation of the personal representative, or the personal representative's attorney, owing to, or in favor of, the estate.

9835. Authorization by order of court is required for the compromise or settlement of a claim or right of action given to the personal representative by any law for the wrongful death or injury of the decedent, including any action brought by the personal representative in attempting enforcement of the claim or right of action. Authorization to compromise or settle the claim or right of action includes authorization to give a covenant not to sue.

9836. The court authorization required by this chapter shall be obtained from the court in which the estate is being administered.

9837. (a) A petition for an order authorizing a compromise, settlement, extension, renewal, or modification under this chapter may be filed by any of the following:

(1) The personal representative.

(2) Any interested person who has obtained the written approval of the personal representative to file the petition.

(b) The petition shall show the terms of the compromise, settlement, extension, renewal, or modification and its advantage to the heirs or devisees and the estate.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

9838. (a) If an order made under Section 9837 authorizes a compromise or settlement that requires the transfer of real property of the estate, the personal representative shall execute a conveyance

of the real property to the person entitled thereto under the compromise or settlement. The conveyance shall refer to the order authorizing the compromise or settlement and directing that the conveyance be executed. A certified copy of the order shall be recorded in the office of the recorder of the county in which the real property or any portion thereof lies.

(b) A conveyance made in compliance with the court order authorizing the compromise or settlement and directing the conveyance to be executed vests in the person to whom the property is transferred both of the following:

(1) All the right, title, and interest which the decedent had in the property at the time of the decedent's death.

(2) Any other or additional right, title, or interest in the property acquired by the estate of the decedent, by operation of law or otherwise, prior to the transfer.

9839. If the personal representative pays a claim for less than its full amount, the personal representative's accounts may be credited only for the amount actually paid.

CHAPTER 10. ACCEPTANCE OF DEED IN LIEU OF FORECLOSURE OR TRUSTEE'S SALE; GRANT OF PARTIAL SATISFACTION OR PARTIAL RECONVEYANCE

9850. (a) If it is to the advantage of the estate to accept a deed to property which is subject to a mortgage or deed of trust in lieu of foreclosure of the mortgage or sale under the deed of trust, the personal representative may, after authorization by order of the court and upon such terms and conditions as may be imposed by the court, accept a deed conveying the property to the heirs or devisees of the decedent, subject to administration.

(b) To obtain an order under this section, the personal representative or any interested person shall file a petition showing the advantage to the estate of accepting the deed. Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) The court shall make an order under this section only if the advantage to the estate of accepting the deed is shown by clear and convincing evidence.

9851. (a) Except as provided in subdivision (c), if it is to the advantage of the estate for the personal representative to give a partial satisfaction of a mortgage or to cause a partial reconveyance to be executed by a trustee under a trust deed held by the estate, the personal representative may, after authorization by order of the court and upon such terms and conditions as may be imposed by the court, give the partial satisfaction or cause the partial reconveyance to be executed by the trustee.

(b) To obtain an order under this section, the personal representative or any interested person shall file a petition showing the advantage to the estate of giving the partial satisfaction or causing the partial reconveyance. Notice of the hearing on the

petition shall be given as provided in Section 1220.

(c) No authorization by the court is necessary for the personal representative to give a partial satisfaction of a mortgage or to cause a partial reconveyance to be executed by a trustee under a trust deed held by the estate if the partial satisfaction or partial reconveyance is executed pursuant to the terms of the mortgage or trust deed held by the estate.

CHAPTER 11. CONVEYANCE OR TRANSFER OF PROPERTY CLAIMED TO BELONG TO DECEDENT OR OTHER PERSON

9860. (a) The personal representative or any interested person may file a petition requesting that the court make an order under this chapter in any of the following cases:

(1) Where the decedent while living is bound by a contract in writing to convey real property or to transfer personal property and dies before making the conveyance or transfer and the decedent, if living, could have been compelled to make the conveyance or transfer.

(2) Where the decedent while living binds himself or herself or his or her personal representative by a contract in writing to convey real property or to transfer personal property upon or after his or her death and the contract is one which can be specifically enforced.

(3) Where the decedent died in possession of, or holding title to, real or personal property, and the property or some interest therein is claimed to belong to another.

(4) Where the decedent died having a claim to real or personal property, title to or possession of which is held by another.

(b) The petition shall set forth the facts upon which the claim is based.

9861. (a) At least 30 days prior to the day of the hearing, the petitioner shall cause notice of the hearing and a copy of the petition to be served in the same manner as provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure on all of the following persons:

(1) The personal representative.

(2) Any person claiming an interest in, or having title to or possession of, the property.

(b) Except for those persons given notice pursuant to subdivision (a):

(1) Notice of the hearing also shall be given as provided in Section 1220.

(2) In addition to the notice required by paragraph (1), notice of the hearing, together with a copy of the petition, shall be given as provided in Section 1220 to all of the following:

(A) Each known devisee whose interest in the estate is affected by the proposed purchase.

(B) Each known heir whose interest in the estate is affected by the proposed purchase.

9862. Any interested person may request time for filing a response to the petition, for discovery proceedings, or for other preparation for the hearing, and the court shall grant a continuance for a reasonable time for any of these purposes.

9863. If the matter concerns real property, notice of the pendency of the proceeding may be filed pursuant to Section 409 of the Code of Civil Procedure.

9864. Any person having or claiming title to or an interest in the property which is the subject of the petition may, at or prior to the hearing, object to the hearing of the petition if the petition is filed in a court which is not the proper court under any other provision of law for the trial of a civil action seeking the same relief and, if the objection is established, the court shall not grant the petition.

9865. (a) Except as provided in subdivision (b), if a civil action is pending with respect to the subject matter of a petition filed pursuant to this chapter and jurisdiction has been obtained in the court where the civil action is pending prior to the filing of the petition, upon request of any party to the civil action, the court shall abate the petition until the conclusion of the civil action.

(b) The court need not abate the petition if the court determines that the civil action was filed for the purpose of delay.

9866. The court shall not grant a petition under this chapter if the court determines that the matter should be determined by a civil action.

9867. Except as provided in Sections 9864, 9865, and 9866, if the court is satisfied that a conveyance, transfer, or other order should be made, the court shall make an order authorizing and directing the personal representative, or the other person having title to or possession of the property, to execute a conveyance or transfer to the person entitled thereto or granting other appropriate relief.

9868. (a) The order is prima facie evidence of the correctness of the proceedings and of the authority of the personal representative or other person to make the conveyance or transfer.

(b) After entry of an order that the personal representative or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order.

(c) The personal representative or other person ordered to execute a conveyance or transfer under Section 9867 shall execute the conveyance or transfer according to the terms of the order.

(d) The conveyance or transfer of the personal representative passes title to the property as fully as if the decedent had executed it while living.

CHAPTER 12. PURCHASE OF ESTATE PROPERTY BY PERSONAL REPRESENTATIVE OR PERSONAL REPRESENTATIVE'S ATTORNEY

9880. Except as provided in this chapter, neither the personal representative nor the personal representative's attorney may purchase any property of the estate, or any claim against the estate, directly or indirectly, nor be interested in any such purchase.

9881. Upon a petition filed under Section 9883, the court may make an order under this section authorizing the personal representative or the personal representative's attorney to purchase property of the estate if all of the following requirements are satisfied:

(a) Written consent to the purchase is signed by (1) each known heir whose interest in the estate is affected by the proposed purchase and (2) each known devisee whose interest in the estate is affected by the proposed purchase.

(b) The written consents are filed with the court.

(c) The purchase is shown to be to the advantage of the estate.

9882. Upon a petition filed under Section 9883, the court may make an order under this section authorizing the personal representative or the personal representative's attorney to purchase property of the estate if the will of the decedent authorizes the personal representative or the personal representative's attorney to purchase the property.

9883. (a) The personal representative may file a petition requesting that the court make an order under Section 9881 or 9882. The petition shall set forth the facts upon which the request for the order is based.

(b) If court confirmation of the sale is required, the court may make its order under Section 9881 or 9882 at the time of the confirmation.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

(d) In addition to the notice required by subdivision (c), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known devisee whose interest in the estate is affected by the proposed purchase.

(2) Each known heir whose interest in the estate is affected by the proposed purchase.

(e) If the court is satisfied that the purchase should be authorized, the court shall make an order authorizing the purchase upon the terms and conditions specified in the order, and the personal representative may execute a conveyance or transfer according to the terms of the order. Unless otherwise provided in the will or in the order of the court, the sale of the property shall be made in the same manner as other estate property of the same nature.

9884. This chapter does not prohibit the purchase of property of the estate by the personal representative or the personal

representative's attorney pursuant to a contract in writing made during the lifetime of the decedent if the contract is one that can be specifically enforced and the requirements of Chapter 11 (commencing with Section 9860) are satisfied.

9885. This chapter does not prevent the exercise by the personal representative or the personal representative's attorney of an option to purchase property of the estate given in the will of the decedent if the requirements of Chapter 17 (commencing with Section 9980) are satisfied.

CHAPTER 13. DEDICATION OR CONVEYANCE TO GOVERNMENTAL ENTITY OF EASEMENT OR ACCESS RIGHT

9900. If it is to the advantage of the estate and in the best interest of the interested persons, the personal representative, after authorization by order of the court obtained under this chapter and upon such terms and conditions as the court may prescribe, may do any of the following either with or without consideration:

(a) Dedicate or convey real property of the estate for any purpose to any of the following:

(1) This state or any public entity in this state.

(2) The United States or any agency or instrumentality of the United States.

(b) Dedicate or convey an easement over real property of the estate to any person for any purpose.

(c) Convey, release, or relinquish to this state or any public entity in this state any access rights to any street, highway, or freeway from any real property of the estate.

(d) Consent as a lienholder to a dedication, conveyance, release, or relinquishment under subdivision (a), (b), or (c) by the owner of property subject to the lien.

9901. (a) The personal representative or any interested person may file a petition for an order under this chapter.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

CHAPTER 14. EXCHANGE OF PROPERTY

9920. If it is to the advantage of the estate to exchange property of the estate for other property, the personal representative may, after authorization by order of court obtained under this chapter and upon such terms and conditions as may be imposed by the court, exchange the property for the other property. The terms and conditions prescribed by the court may include the payment or receipt of part cash by the personal representative.

9921. To obtain an order under this chapter, the personal representative or any interested person shall file a petition containing all of the following:

(a) A description of the property.

(b) The terms and conditions of the proposed exchange.

(c) A showing of the advantage to the estate to accrue from the exchange.

9922. (a) Except as provided in subdivision (b), notice of the hearing on the petition shall be given as provided in Section 1220.

(b) If the petition is for authorization to exchange securities as defined in Section 10200 for different securities, the court, upon a showing of good cause, may order that the notice be given for a shorter period or that the notice be dispensed with. The order provided by this subdivision may be made ex parte.

9923. No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the exchange made pursuant to an order made under this chapter.

CHAPTER 15. LEASES

9940. For the purpose of this chapter:

(a) "Lease" includes, without limitation, a lease that includes an option to purchase real propery of the estate.

(b) If a lease gives the lessee the right to extend the term of the lease, the length of the term shall be considered as though the right to extend had been exercised.

9941. If it is to the advantage of the estate, the personal representative may lease, as lessor, real property of the estate without authorization of the court in either of the following cases:

(a) Where the rental does not exceed one thousand five hundred dollars ($1,500) a month and the term does not exceed one year.

(b) Where the lease is from month to month, regardless of the amount of the rental.

9942. (a) The personal representative may lease, as lessor, real property of the estate after authorization by order of court obtained under this chapter upon a showing that the proposed lease is to the advantage of the estate.

(b) If the proposed lease includes an option to purchase real property of the estate, a petition for an order authorizing the lease shall be filed under this chapter but the applicable provisions for court approval both in this chapter and in Chapter 16 (commencing with Section 9960) apply to the execution of the lease.

9943. (a) To obtain an order under this chapter, the personal representative or any interested person shall file a petition containing all of the following:

(1) A general description of the real property proposed to be leased.

(2) The term, rental, and general conditions of the proposed lease.

(3) A showing of the advantage to the estate to accrue from giving the lease.

(b) If the lease is proposed to be for a term longer than 10 years, the petition shall also state facts showing the need for the longer lease and its advantage to the estate and its benefit to the interested

persons.

9944. (a) Notice of the hearing on the petition shall be given as provided in Section 1220 and posted as provided in Section 1230.

(b) Notice of the hearing on the petition also shall be given as provided in Section 10300, but this notice is not required if the will authorizes or directs the personal representative to lease or sell property.

(c) If the lease is proposed to be for a term longer than 10 years, in addition to the notice required by subdivision (a), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the proposed lease.

(2) Each known devisee whose interest in the estate is affected by the proposed lease.

9945. (a) At the hearing, the court shall entertain and consider any other offer made in good faith at the hearing to lease the same property on more favorable terms.

(b) If the court is satisfied that it will be to the advantage of the estate, and, if the lease is for more than 10 years, that it is to the benefit of interested persons, the court shall make an order authorizing the personal representative to make the lease to the person on the terms and conditions stated in the order. The court shall not make an order authorizing the personal representative to make the lease to any person other than the lessee named in the petition unless the offer made at the hearing is acceptable to the personal representative.

9946. (a) Subject to Section 9947, an order authorizing the execution of a lease shall set forth the minimum rental or royalty or both and the period of the lease.

(b) The order may authorize other terms and conditions of the lease, including, with respect to a lease for the purpose of exploration for or production or removal of minerals, oil, gas, or other hydrocarbon substances, or geothermal energy, any one or more of the following provisions:

(1) A provision for the payment of rental and royalty to a depositary.

(2) A provision for the appointment of a common agent to represent the interests of all the lessors.

(3) A provision for the payment of a compensatory royalty in lieu of rental and in lieu of drilling and producing operations on the land covered by the lease.

(4) A provision empowering the lessee to enter into any agreement authorized by Section 3301 of the Public Resources Code with respect to the land covered by the lease.

(5) A provision for a community oil lease or a pooling or unitization by the lessee.

(c) If the lease covers additional property owned by other persons or an undivided or other interest of the decedent less than the entire

ownership in the property, the order may authorize the lease to provide for division of rental and royalty in the proportion that the land or interest of each owner bears to the total area of the land or total interests covered by the lease.

9947. (a) Except as provided in this section, the period of the lease shall be for such time as the court may authorize.

(b) Except as provided in subdivision (c), the court shall not authorize a lease for longer than 10 years if any heir or devisee who has an interest in the property to be leased objects at the hearing.

(c) If the lease is for the purpose of exploration for or production or removal of minerals, oil, gas, or other hydrocarbon substances, or geothermal energy, the court may authorize that the lease be for a fixed period and any of the following:

(1) So long thereafter as minerals, oil, gas, or other hydrocarbon substances or geothermal energy are produced in paying quantities from the property leased or mining or drilling operations are conducted thereon.

(2) If the lease provides for the payment of a compensatory royalty, so long thereafter as such compensatory royalty is paid.

(3) If the land covered by the lease is included in an agreement authorized by Section 3301 of the Public Resources Code, so long thereafter as oil, gas, or other hydrocarbon substances are produced in paying quantities from any of the lands included in any such agreement or drilling operations are conducted thereon.

9948. (a) The personal representative shall execute, acknowledge, and deliver the lease as directed, setting forth therein that it is made by authority of the order, giving the date of the order.

(b) A lease made pursuant to an order obtained under this chapter is effectual to demise and let the premises described in the order at the rent, for the term, and upon the conditions prescribed in the order.

(c) Jurisdiction of the court to administer the estate of the decedent shall be effectual to vest the court with jurisdiction to make the order for the lease. This jurisdiction shall conclusively inure to the benefit of the lessee and the lessee's heirs and assigns.

(d) No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the lease made pursuant to an order made under this chapter.

CHAPTER 16. GRANTING OPTION TO PURCHASE REAL PROPERTY

9960. After authorization by order of court obtained under this chapter, the personal representative may grant an option to purchase real property of the estate for a period within or beyond the period of administration.

9961. To obtain an order under this chapter, the personal representative shall file a petition containing all of the following:

(a) A description of the real property.

(b) The terms and conditions of the proposed option.

(c) A showing of the advantage to the estate to accrue from the granting of the option.

9962. The purchase price of the real property subject to the option shall be at least 90 percent of the appraised value of the real property. The appraisal shall be one made by a probate referee within one year prior to the hearing of the petition.

9963. (a) Notice of the hearing on the petition shall be given as provided in Section 1220 and posted as provided in Section 1230.

(b) In addition to the notice required by subdivision (a), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate would be affected by the granting of the option.

(2) Each known devisee whose interest in the estate would be affected by the granting of the option.

9964. (a) The court shall make an order authorizing the personal representative to grant the option upon the terms and conditions stated in the order if the court is satisfied as to all of the following:

(1) Good reason exists to grant the option and granting the option will be to the advantage of the estate.

(2) It does not appear that a higher offer with respect to the purchase price of the real property subject to the option may be obtained. An offer is a higher offer with respect to purchase price only if the offer satisfies the requirements of Section 10311 governing increased bids in real property sales.

(3) It does not appear that a better offer with respect to the terms of the option may be obtained. An offer is a better offer with respect to the terms of the option only if the offer is materially more advantageous to the estate.

(b) A higher offer made either for cash or on credit, whether on the same or different credit terms, or a better offer, shall be considered only if the personal representative informs the court in person or by counsel, before the court makes its order authorizing the granting of the option, that the offer is acceptable.

9965. An option granted pursuant to an order made under this chapter, whether within or beyond the administration of the estate, is subject to Chapter 4 (commencing with Section 884.010) of Title 5 of Part 2 of Division 2 of the Civil Code.

9966. No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the granting of an option pursuant to an order made under this chapter.

CHAPTER 17. OPTION TO PURCHASE GIVEN IN WILL

9980. (a) When an option to purchase real or personal property is given in a will, the person given the option has the right to exercise the option at any time within the time limits provided by the will. For the purposes of this section, if a time limitation in the will is measured from the death of the testator, that time shall be extended

by the period between the testator's death and the issuance of letters testamentary or of administration with the will annexed or by six months, whichever is the shorter period.

(b) If the will does not provide a time limit for exercise of the option, the time limit is one year from the death of the decedent.

(c) Subject to subdivision (b), if the option given in the will is exercisable under the terms of the will after the time that the estate would otherwise be closed, the property subject to the option shall be distributed subject to the option.

9981. (a) When an option to purchase real or personal property is given in a will admitted to probate, the court may make an order under this chapter directing the personal representative to transfer or convey the property to the person given the option upon compliance with the terms and conditions stated in the will.

(b) The personal representative or the person given the option to purchase the property may file a petition for an order pursuant to this chapter.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

9982. The court shall not make an order under this chapter unless one of the following requirements is satisfied:

(a) The court determines that the rights of creditors will not be impaired by the making of the order.

(b) The court requires a bond in an amount and with such surety as the court shall direct or approve.

9983. No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the transfer or conveyance made pursuant to an order made under this chapter.

CHAPTER 18. SALES

Article 1. General Provisions

10000. Subject to the limitations, conditions, and requirements of this chapter, the personal representative may sell real or personal property of the estate in any of the following cases:

(a) Where the sale is necessary to pay debts, devises, family allowance, expenses of administration, or taxes.

(b) Where the sale is to the advantage of the estate and in the best interest of the interested persons.

(c) Where the property is directed by the will to be sold.

(d) Where authority is given in the will to sell the property.

10001. (a) If the personal representative neglects or refuses to sell the property, any interested person may petition the court for an order requiring the personal representative to sell real or personal property of the estate in any of the following cases:

(1) Where the sale is necessary to pay debts, devises, family allowance, expenses of administration, or taxes.

(2) Where the sale is to the advantage of the estate and in the best

interest of the interested persons.

(3) Where the property is directed by the will to be sold.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) Notice of the hearing on the petition also shall be given to the personal representative by citation served at least five days before the hearing.

10002. (a) Subject to subdivision (b), if directions are given in the will as to the mode of selling or the particular property to be sold, the personal representative shall comply with those directions.

(b) If the court determines that it would be to the advantage of the estate and in the best interest of the interested persons, the court may make an order relieving the personal representative of the duty to comply with the directions in the will. The order shall specify the mode and the terms and conditions of selling or the particular property to be sold, or both. The personal representative or any interested person may file a petition for an order under this subdivision. Notice of the hearing on the petition shall be given as provided in Section 1220.

10003. Subject to Chapter 13 (commencing with Section 750) of Division 3 and to Sections 10001 and 10002, if estate property is required or permitted to be sold, the personal representative may:

(a) Use discretion as to which property to sell first.

(b) Sell the entire interest of the estate in the property or any lesser interest therein.

(c) Sell the property either at public auction or private sale.

10004. (a) When the personal representative determines in his or her discretion that, by use or relationship, any assets of the estate, whether real or personal, constitute a unit for purposes of sale, the personal representative may cause the property to be appraised as a unit.

(b) Whether or not the property is appraised as a unit, the personal representative may sell all the assets described in subdivision (a) as a unit and under one bid if the court finds the sale of the assets as a unit to be to the advantage of the estate.

(c) No private sale of the assets as a unit may be made for less than 90 percent of the sum of the appraised values of the personal property and the sum of the appraised values of the real property, appraised separately, or for less than 90 percent of the appraised value if appraised as a unit.

(d) If the assets to be sold as a unit include any real property, the sale shall be made in the manner provided for the sale of real property, and the bid and sale are subject to the limitations and restrictions established for the sale of real property. If the assets to be sold as a unit are entirely personal property, the property shall be sold in the manner provided for the sale of personal property.

10005. (a) If any property of the estate is sold for more than the appraisement, the personal representative shall account for the proceeds of sale, including the excess over the appraisement.

(b) If any property of the estate is sold for less than the appraisement and the sale has been made in accordance with law, the personal representative is not responsible for the loss.

Article 2. Contract With Agent, Broker, or Auctioneer

10150. (a) The personal representative may enter into a written contract with either or both of the following:

(1) A licensed real estate broker to secure a purchaser for any real property of the estate. The broker may associate other licensed real estate brokers for this purpose, including use of a multiple listing service as defined in Section 1087 of the Civil Code.

(2) One or more agents or brokers to secure a purchaser for any personal property of the estate. If the particular property to be sold or the particular manner of sale requires that the agent or broker be licensed, the contract may be made only with an agent or broker that is so licensed.

(b) The contract may provide for payment of a commission out of the proceeds of sale, but the contract is binding and valid as against the estate only for such amount as the court allows pursuant to Article 3 (commencing with Section 10160). No liability of any kind is incurred by the estate under the contract or a sale unless the sale is confirmed by the court, except for the obligations of the estate to the purchaser of personal property as to which title passes pursuant to Section 10259 without court confirmation or approval. The personal representative is not personally liable on the contract by reason of execution of the contract.

(c) The contract may grant an exclusive right to sell property for a period not in excess of 90 days if, prior to execution of the contract granting an exclusive right to sell, the personal representative obtains permission of the court to enter into the contract upon a showing of necessity and advantage to the estate. The court may grant the permission when the personal representative is appointed or at any subsequent time upon ex parte application. The personal representative may execute one or more extensions of the contract granting an exclusive right to sell property, each extension being for a period not to exceed 90 days, if for each extension the personal representative obtains permission of the court upon ex parte application to extend the contract upon a showing of necessity and advantage to the estate of the extension.

10151. (a) The personal representative may enter into a written contract with any of the following:

(1) Where the public auction sale will be held in this state, an auctioneer who holds a valid license under Chapter 3.7 (commencing with Section 5700) of Division 3 of the Business and Professions Code to conduct a public auction sale and to secure purchasers by that method for any personal property of the estate to the extent authorized under Chapter 3.7 (commencing with Section 5700) of Division 3 of the Business and Professions Code.

(2) Where the public auction sale will be held outside this state pursuant to an order made under Section 10254, an auctioneer who is legally permitted in the jurisdiction where the sale will be held to conduct a public auction sale and to secure purchasers by that method for the personal property authorized to be sold by public auction sale in that jurisdiction under the court order.

(b) The contract shall be one that is legally enforceable under the law of the jurisdiction where made.

(c) The contract may provide for payment to the auctioneer of a fee or commission out of the proceeds of sale and for reimbursement of expenses, but the contract is binding and valid as against the estate only for such amounts as the court allows pursuant to Section 10167. No liability of any kind is incurred by the estate under the contract or a sale unless the sale is approved by the court, except for the obligations of the estate to the purchaser of personal property as to which title passes pursuant to Section 10259 without court confirmation or approval. The personal representative is not personally liable on the contract by reason of execution of the contract.

(d) The contract may provide that personal property of two or more estates being administered by the same personal representative may be sold at the same public auction sale. Items of personal property may be sold separately or in a lot with other items from the same estate. A sale pursuant to the contract shall be with reserve. The auctioneer shall comply with the instructions of the personal representative with respect to withdrawal of items, risk of loss, place of delivery, warranties, and other matters.

Article 3. Compensation of Agent, Broker, or Auctioneer

10160. The estate is not liable to an agent, broker, or auctioneer under a contract for the sale of property or for any fee, commission, or other compensation or expenses in connection with a sale of property unless the following requirements are satisfied:

(a) An actual sale is made.

(b) If court confirmation or approval is required, the sale is confirmed or approved by the court as required.

(c) The sale is consummated.

10161. (a) Subject to the provisions of this article, whether or not the agent or broker has a contract with the personal representative, the fee, commission, or other compensation of an agent or broker in connection with a sale of property shall be the amount the court, in its discretion, determines to be a reasonable compensation for the services of the agent or broker to the estate.

(b) Unless the agent or broker holds a contract granting an exclusive right to sell the property, an agent or broker is not entitled to any fee, commission, or other compensation for services to the estate in connection with a sale except in the following cases:

(1) Where the agent or broker produces the original bid which is

returned to the court for confirmation.

(2) Where the property is sold on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser procured by the agent or broker.

(c) If the agent or broker has a contract with the personal representative, the amount of the compensation of the agent or broker in connection with the sale of property shall not exceed the amount provided for in the contract.

10162. (a) Subject to subdivision (b), where the bid returned to the court for confirmation is made by a person who is not represented by an agent or broker and the successful bidder is represented by an agent or broker, the compensation of the agent or broker who procured the purchaser to whom the sale is confirmed shall not exceed one-half of the difference between the amount of the bid in the original return and the amount of the successful bid.

(b) This section does not limit the compensation of the agent or broker who holds a contract under Section 10150 granting him or her the exclusive right to sell the property.

10162.3. (a) This section applies if all of the following circumstances exist:

(1) There is no agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property.

(2) The bid returned to court for confirmation is made by a person represented by an agent or broker.

(3) The court confirms the sale to that purchaser on the bid returned to court for confirmation.

(b) If all the circumstances described in subdivision (a) exist, the court shall allow the agent or broker who procured the purchaser to whom the sale is confirmed the compensation determined under Section 10161 on the full amount for which the sale is confirmed.

10162.5. Where an agent or broker holds a contract under Section 10150 granting the exclusive right to sell the property, the court shall allow to the agent or broker holding the contract the compensation determined under Section 10161 on:

(a) The full amount for which the sale is confirmed if both of the following circumstances exist:

(1) The bid returned to the court for confirmation is made by a person who is not represented by an agent or broker.

(2) The court confirms the sale to that purchaser on that bid.

(b) The amount of the original bid if both of the following circumstances exist:

(1) The bid returned to court for confirmation is made by a person who is not represented by an agent or broker.

(2) The court confirms the sale on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser who was not procured by a bona fide agent or broker.

10162.7. (a) This section applies if all of the following circumstances exist:

(1) There is an agent or broker holding a contract under Section

10150 granting the exclusive right to sell the property.

(2) The bid returned to court for confirmation is made by a purchaser procured by another agent or broker.

(3) The court confirms the sale to that purchaser on the bid returned to court for confirmation.

(b) If all the circumstances described in subdivision (a) exist, the court shall allow the compensation determined under Section 10161 on the full amount for which the sale is confirmed. The compensation allowed by the court shall be divided between the agent or broker holding the contract and the other agent or broker as is provided in any agreement between the agent or broker holding the contract and the other agent or broker. If there is no agreement, the compensation shall be divided equally between the agent or broker holding the contract and the other agent or broker.

10163. Subject to Section 10162, the court shall allow the compensation determined under Section 10161 on the full amount for which the sale is confirmed to the agent or broker who procured the purchaser to whom the sale is confirmed if all of the following circumstances exist:

(a) There is no agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property.

(b) The original bid was made direct to the estate by a purchaser who was not procured by an agent or broker.

(c) The court confirms a sale on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser procured by a bona fide agent or broker.

10164. (a) This section applies only where the court confirms a sale on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser who was not procured by a bona fide agent or broker.

(b) Except as provided in subdivision (c), the court shall allow the compensation determined under Section 10161 on the amount of the original bid to the agent or broker whose original bid was returned to the court.

(c) If an agent or broker holds a contract under Section 10150 granting the exclusive right to sell the property and the original bid returned to the court is made by a purchaser who was procured by another agent or broker, the compensation determined under Section 10161 on the amount of the original bid shall be divided between the agent or broker holding the contract and the other agent or broker as is provided in any agreement between the agent or broker holding the contract and the other agent or broker. If there is no agreement, the compensation shall be divided equally between the agent or broker holding the contract and the other agent or broker.

10165. (a) Where the court confirms a sale on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser procured by a bona fide agent or broker, the court shall allow the compensation determined under Section 10161 on the full

amount for which the sale is confirmed, as provided in this section, if either of the following conditions is satisfied:

(1) The original bid returned to the court for confirmation was made by a purchaser who was procured by another agent or broker.

(2) Another agent or broker holds a contract under Section 10150 granting the exclusive right to sell the property.

(b) The agent or broker who procured the purchaser to whom the sale is confirmed shall be paid one-half of the compensation on the amount of the original bid and all of the compensation on the difference between the original bid and the amount for which the sale is confirmed.

(c) The other one-half of the compensation on the amount of the original bid shall be paid as follows:

(1) If the original bid returned to the court is made by a purchaser who was procured by the agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property, the entire one-half of the compensation on the original bid shall be paid to that agent or broker.

(2) If the original bid returned to the court is made by a purchaser who was procured by a bona fide agent or broker and there is no agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property, the entire one-half of the compensation on the original bid shall be paid to that agent or broker.

(3) If there is an agent or broker who holds a contract under Section 10150 granting the exclusive right to sell the property and the original bid returned to the court is made by a purchaser who was procured by another agent or broker, the one-half of the compensation on the amount of the original bid shall be divided between the agent or broker holding the contract granting the exclusive right to sell the property and the other agent or broker whose original bid was returned to the court for confirmation as is provided in any agreement between the agent or broker holding the contract and the other agent or broker. If there is no agreement, the one-half of the compensation on the amount of the original bid shall be divided equally between the agent or broker holding the contract and the other agent or broker whose original bid was returned to the court for confirmation.

10166. Notwithstanding that a bid contains a condition that a certain amount of the bid shall be paid to an agent or broker by the personal representative, only such compensation as is proper under this article shall be allowed. Acceptance of the bid by the court binds the bidder even though the compensation allowed by the court is less than that specified by the condition.

10167. (a) Subject to subdivision (b), whether or not the auctioneer has a contract with the personal representative, the fees, compensation, and expenses of an auctioneer in connection with a sale of property shall be the amount the court, in its discretion, determines to be a reasonable compensation for the services of the

auctioneer to the estate.

(b) If the auctioneer has a contract with the personal representative, the amount of the compensation of the auctioneer in connection with the sale of property shall not exceed the amount provided for in the contract.

Article 4. Special Provisions Applicable to Particular Types of Property

10200. (a) As used in this section, "securities" means "security" as defined in Section 70, land trust certificates, certificates of beneficial interest in trusts, investment trust certificates, mortgage participation certificates, or certificates of deposit for any of the foregoing, but does not include notes secured by a mortgage or deed of trust unless the note or notes have been authorized or permitted to be issued by the Commissioner of Corporations or have been made by a public utility subject to the Public Utilities Act (Part 1 (commencing with Section 201) of Division 1 of the Public Utilities Code).

(b) After authorization by order of court, securities may be sold or may be surrendered for redemption or conversion. Title to the securities sold or surrendered as authorized by an order obtained under this section passes without the need for subsequent court confirmation.

(c) To obtain an order under this section, the personal representative or any interested person shall file a petition stating the terms and conditions and the advantage to the estate of the proposed sale or redemption or conversion. If the court authorizes the sale, redemption, or conversion, the court's order shall fix the terms and conditions of sale, redemption, or conversion.

(d) Notice of the hearing on the petition shall be given as provided in Section 1220 and posted as provided in Section 1230, but the court may order that the notice be given for a shorter period or dispensed with.

(e) No notice of sale or of the redemption or conversion need be given if any of the following conditions are satisfied:

(1) The minimum selling price is fixed by the court.

(2) The securities are to be sold on an established stock or bond exchange.

(3) The securities to be sold are securities designated as a national market system security on an interdealer quotation system, or subsystem thereof, by the National Association of Securities Dealers, Inc., sold through a broker-dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker-dealer.

(4) The securities are to be surrendered for redemption or conversion.

10201. (a) As used in this section:

(1) "Federal association" has the same meaning as defined in

Section 5102 of the Financial Code.

(2) "Mutual capital certificate" has the same meaning as defined in Section 5111 of the Financial Code.

(3) "Savings account" has the same meaning as defined in Section 5116 of the Financial Code.

(4) "Savings association" has the same meaning as defined in Section 5102 of the Financial Code.

(5) "Withdrawal value" has the same meaning as defined in Section 5124 of the Financial Code.

(b) Notwithstanding Section 10200, savings accounts and mutual capital certificates of a savings association or federal association may be sold or surrendered for withdrawal by the personal representative, and title thereto passed, without notice of sale, prior order of court, or subsequent confirmation by the court, if an amount of money is obtained upon the sale or withdrawal not less than the withdrawal value of the savings account or the value of the mutual capital certificate.

(c) Notwithstanding Section 10200, credit union share accounts and certificates for funds may be sold or withdrawn by the personal representative, and title thereto passed, without notice of sale, prior order of court, or subsequent confirmation by the court, if an amount of money is obtained upon the sale or withdrawal not less than the withdrawal value of the share account or the value of the certificate for funds.

10202. Notwithstanding Section 10200, if an estate by reason of owning securities, also owns or receives subscription rights for the purchase of additional securities, the personal representative may sell all or part of the subscription rights without notice of sale, prior order of court, or subsequent confirmation by the court.

10203. (a) Except as provided in subdivision (b), where property to be sold consists of a leasehold interest, the sale shall be made as in the case of the sale of personal property of the estate.

(b) The sale of a leasehold interest shall be made as in the case of the sale of real property of the estate if the interest to be sold consists of any of the following:

(1) A leasehold interest in real property with an unexpired term of 10 years or longer. For this purpose, the leasehold interest shall be considered to have an unexpired term of 10 years or longer if the lessee has the right to extend the term and the term, if extended, would exceed 10 years.

(2) A leasehold interest in real property together with an option to purchase the leased property or some part thereof.

(3) A lease for the purpose of production of minerals, oil, gas, or other hydrocarbon substances, or geothermal energy.

10204. Property of the estate that consists of a partnership interest or an interest belonging to an estate by virtue of a partnership formerly existing may be sold in the same manner as other personal property.

10205. A chose in action belonging to the estate may be sold in

the same manner as other personal property.

10206. (a) Except as otherwise provided in this section, if the decedent at the time of death was possessed of a contract for the purchase of real property and the decedent's interest in the property and under the contract is to be sold, the sale shall be made as in the case of the sale of real property of the estate.

(b) If the decedent's interest in the property and under the contract is sold, the sale shall be made subject to all payments which are due at the time of sale or which may thereafter become due on the contract. Except as provided in subdivision (d), if there are any payments due or to become due, the court shall not confirm the sale until the purchaser executes a bond to the personal representative that satisfies the requirements of subdivision (c).

(c) The bond shall be for the benefit and indemnity of the personal representative and the persons entitled to the interest of the decedent in the real property contracted for. The amount of the bond shall be equal to the amount of payments then due and thereafter to become due on the contract, with such sureties as the court or judge may approve. The bond shall be conditioned that the purchaser will (1) make all payments for the property which are then due or which become due after the date of the sale and (2) fully indemnify the personal representative and the person entitled to the interest of the decedent against all demands, costs, charges, and expenses, by reason of any covenant or agreement contained in the contract.

(d) The bond need not be given in either of the following cases:

(1) When no claim has been made against the estate on the contract and the time for filing claims has expired.

(2) When the person entitled to payment under the contract waives all recourse to the assets of the estate for payment and releases the estate and the personal representative from liability for payment.

10207. (a) Real property suitable for a shift-in-land-use loan to develop grazing or pasture facilities may be sold under this section by the personal representative to a grazing or pasture association in conformity with the federal Consolidated Farm and Rural Development Act, 7 U.S.C. Sec. 1921, et seq., after authorization by order of the court.

(b) The personal representative or any interested person may file a petition for an order under this section. Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) An order for sale of property under this section may be made only if the court determines both of the following:

(1) Either the sale is made pursuant to the will of the decedent or all of the following have consented to the sale:

(A) Each known heir whose interest in the estate would be affected by the sale.

(B) Each known devisee who has an interest in the property under the decedent's will.

(2) The sale will not jeopardize the rights of creditors of the estate.

(d) If the court makes an order authorizing sale of the property, the personal representative may make the sale in accord with the terms and conditions set out in the order, subject to the following requirements:

(1) Except as provided in Sections 10002, 10301, 10303, and 10503, notice of the time and place of the sale shall be published pursuant to Section 10300.

(2) The price of the sale made shall be not less than the value of the property as established by an independent and competent appraiser mutually acceptable to the federal government, the grazing or pasture association, and the personal representative.

(3) Except as provided in Sections 10002 and 10503, the sale shall be reported to and confirmed by the court as provided in Article 6 (commencing with Section 10300) before title to the property passes, but the sale may be made irrespective of whether a higher bid is made to the court at the hearing on the petition to confirm the sale.

Article 5. Sale of Personal Property

10250. Subject to Sections 10251 and 10252 and except as otherwise provided by statute, personal property of the estate may be sold only after notice of sale is given by one or both of the following methods, as the personal representative may determine:

(a) Posting at the county courthouse of the county in which the proceedings are pending at least 15 days before:

(1) In the case of a private sale, the day specified in the notice of sale as the day on or after which the sale is to be made.

(2) In the case of a public auction sale, the day of the auction.

(b) Publication pursuant to Section 6063a of the Government Code in a newspaper in the county in which the proceedings are pending, such publication to be completed before:

(1) In the case of a private sale, the day specified in the notice of sale as the day on or after which the sale is to be made.

(2) In the case of a public auction sale, the day of the auction.

10251. (a) If it is shown that it will be to the advantage of the estate, the court or judge may by order shorten the time of notice of sale to not less than five days.

(b) If the court or judge makes an order under subdivision (a), notice of sale shall be given by one or both of the following methods, as the personal representative may determine:

(1) By posting as provided in Section 10250 except that the posting shall be for at least five days instead of 15 days as required by Section 10250.

(2) By publication as provided in Section 10250 except that the publication shall be pursuant to Section 6061 of the Government Code.

10252. Personal property may be sold with or without notice, as

the personal representative may determine, in any of the following cases:

(a) Where the property is directed by the will to be sold.

(b) Where authority is given in the will to sell the property.

(c) Where the property is perishable, will depreciate in value if not disposed of promptly, or will incur loss or expense by being kept.

(d) Where sale of the property is necessary to provide for the payment of a family allowance pending receipt of other sufficient funds.

10253. (a) The notice of sale given pursuant to Section 10250 shall state all of the following:

(1) Whether the sale is to be a private sale or a public auction sale.

(2) In the case of a private sale, the place at which bids or offers will be received and a day on or after which the sale will be made or, in the case of a public auction sale, the time and place of sale.

(3) A brief description of the personal property to be sold.

(b) The notice of sale may state other matters in addition to those required by subdivision (a), including terms and conditions of sale.

10254. (a) Unless the court orders otherwise pursuant to subdivision (b):

(1) A sale of personal property at a public auction sale shall be made within this state at the courthouse door, at the auction house, at some other public place, or at the residence of the decedent.

(2) No public auction sale shall be made of any tangible personal property that is not present at the time of sale.

(b) Upon petition of the personal representative or any interested person, the court may order either or both of the following:

(1) That a sale of personal property at public auction be made at any place within or without the United States.

(2) That tangible personal property need not be present at the time of sale.

(c) The personal representative may postpone a public auction sale of personal property from time to time if all of the following conditions are satisfied:

(1) The personal representative believes that the postponement will serve the interests of all persons concerned.

(2) Notice of the postponement is given by public declaration at the time and place appointed for the sale.

(3) The postponement, together with previous postponements of sale of the property, does not exceed three months.

10255. (a) A private sale of personal property may not be made before the day stated in the notice of sale as the day on or after which the sale will be made, nor later than one year after that day.

(b) In the case of a private sale of personal property, the bids or offers shall be in writing and shall be left at the place designated in the notice of sale, or be delivered to the personal representative personally or to the person specified in the notice of sale, at any time after the first publication or posting of notice of sale and before the making of the sale.

10256. Whether a sale of personal property is private or at public auction, bids shall substantially comply with any terms specified in the notice of sale.

10257. (a) Personal property may be sold for cash or on credit.

(b) Except as may otherwise be ordered by the court pursuant to Section 10258, if a sale is made on credit, not less than 25 percent of the purchase price shall be paid in cash at the time of sale, and the personal representative shall do one of the following:

(1) Take the note of the purchaser for the balance of the purchase money, with a security interest in the personal propery sold, to secure the payment of the balance.

(2) Enter into a conditional sale contract under which title is retained until the balance is paid.

(c) The terms of the note and security interest or conditional sale contract shall be approved by the court at the time of confirmation of sale.

(d) Where property sold by the personal representative for part cash and part deferred payments consists of an undivided interest in personal property or any other interest therein less than the entire ownership and the owner or owners of the remaining interests therein join in the sale, the note and security interest may be made to the personal representative and such others having an interest in the property. The interest of the personal representative in the note and security interest shall be in the same interest and in the same proportions as the estate's interest in the property prior to the sale.

10258. (a) On petition of the personal representative, the court may by order authorize a sale of personal property on credit on terms providing for less than 25 percent of the purchase price to be paid in cash at the time of sale, or may waive or modify the requirement that a security interest or other lien shall be retained or taken to secure payment of the balance of the purchase price, where it is shown that the terms are to the advantage of the estate and the property to be sold is of such a nature that it is impracticable to sell the property for a larger cash payment at the time of sale or to retain a security interest or other lien in the property. The order of the court shall fix the terms and conditions of the sale.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220 and posted as provided in Section 1230.

(c) In addition to the notice required by subdivision (b), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate would be affected by the sale.

(2) Each known devisee whose interest in the estate would be affected by the sale.

10259. (a) Title to the following personal property passes upon sale without the need for court confirmation or approval:

(1) Personal property which is perishable, which will depreciate in value if not disposed of promptly, or which will incur loss or

expense by being kept.

(2) Personal property the sale of which is necessary to provide for the payment of a family allowance pending receipt of other sufficient funds.

(b) Title to personal property sold at public auction passes without the need for court confirmation or approval upon receipt of the purchase price and:

(1) In the case of tangible personal property, the delivery of the property to the purchaser.

(2) In the case of intangible personal property, the delivery to the purchaser of the instrument that transfers the title to the property to the purchaser.

(c) The personal representative is responsible for the actual value of the property described in subdivision (a) or (b) unless the sale is reported to and approved by the court.

10260. (a) Except as provided in Sections 10200, 10201, 10202, 10259, and 10503, all sales of personal property shall be reported to and be confirmed by the court before title to the property passes to the purchaser, notwithstanding that the property is directed by the will to be sold or authority is given in the will to sell the property.

(b) If the personal representative fails to file the report and a petition for confirmation of the sale within 30 days after the sale, the purchaser at the sale may file the report and petition for confirmation of the sale.

(c) Notice of the hearing on the petition for confirmation filed under subdivision (a) or (b) shall be given as provided in Section 1220, and posted as provided in Section 1230.

10261. (a) Except as provided in this subdivision, at the hearing on the petition for confirmation of the sale, the court shall examine into the necessity for the sale or the advantage to the estate and the benefit to the interested persons in making the sale. If the decedent's will authorizes or directs the property to be sold, there need be no showing of the necessity of the sale or the advantage to the estate and the benefit to the interested persons in making the sale.

(b) Any interested person may file written objections to the confirmation of the sale at or before the hearing and may testify and produce witnesses in support of the objections.

(c) Before confirming the sale of a partnership interest, whether made to the surviving partner or to any other person, the court shall do both of the following:

(1) Inquire into the condition of the partnership affairs.

(2) Examine any surviving partner if that surviving partner is a resident within the state at the time of the hearing and able to be present in court. The court may issue a citation to compel the surviving partner to attend the hearing.

(d) Upon its own motion or upon the request of the personal representative, the agent or broker, or any other interested person, made at the time of the confirmation hearing or at another time, the court shall fix the compensation of the agent or broker as provided

in Article 3 (commencing with Section 10160).

10262. (a) Except as provided in subdivision (b), if a written offer to purchase the property is made to the court at the hearing on the petition for confirmation of the sale and the new bid is at least 10 percent more than the amount stated in the report made to the court, the court in its discretion may accept the new bid and confirm the sale to the offeror, or may order a new sale, if all of the following conditions are satisfied:

(1) The original bid as stated in the report to the court is more than one hundred dollars ($100) or, if the original bid is less than one hundred dollars ($100), the new bid is at least one hundred dollars ($100) more than the original bid.

(2) The new bid is made by a responsible person.

(3) The new bid complies with all provisions of law.

(b) If there is more than one offer that satisfies the requirements of subdivision (a), the court shall do one of the following:

(1) Accept the highest such offer and confirm the sale to the offeror.

(2) Order a new sale.

(c) This section does not apply to a sale of property described in Section 10259.

10263. If notice of the sale was required, before an order is made confirming the sale, it shall be proved to the satisfaction of the court that notice of the sale was given as required by this article, and the order of confirmation shall show that such proof was made.

10264. No omission, error, or irregularity in the proceedings under this article shall impair or invalidate the proceedings or the sale pursuant to an order made under this article.

Article 6. Sale of Real Property

10300. (a) Except as provided in Sections 10301 to 10303, inclusive, and in Section 10503, real property of the estate may be sold only after notice of sale has been published pursuant to Section 6063a of the Government Code (1) in a newspaper published in the county in which the real property or some portion thereof lies or (2) if there is no such newspaper, in such newspaper as the court or judge may direct.

(b) The publication of notice of sale shall be completed before:

(1) In the case of a private sale, the day specified in the notice as the day on or after which the sale is to be made.

(2) In the case of a public auction sale, the day of the auction.

10301. (a) If it appears from the inventory and appraisement that the value of the real property to be sold does not exceed five thousand dollars ($5,000), the personal representative may in his or her discretion dispense with publication of notice of sale and, in lieu of publication, post the notice of sale at the courthouse of the county in which the real property or some portion thereof lies.

(b) Except as provided in Section 10302, posting pursuant to this

section shall be for at least 15 days before:

(1) In the case of a private sale, the day specified in the notice of sale as the day on or after which the sale is to be made.

(2) In the case of a public auction sale, the day of the auction.

10302. (a) If it is shown that it will be to the advantage of the estate, the court or judge may by order shorten the time of notice of sale to not less than five days.

(b) Except as provided in subdivision (c), if the court or judge makes an order under subdivision (a), notice of sale shall be published as provided in Section 10300 except that the publication shall be pursuant to Section 6061 of the Government Code.

(c) In a case described in Section 10301, if the court makes an order under subdivision (a), notice of sale shall be posted as provided in Section 10301 except that the notice of sale shall be posted at least five days before the sale instead of 15 days as required by Section 10301.

10303. Real property may be sold with or without notice, as the personal representative may determine, in either of the following cases:

(a) Where the property is directed by the will to be sold.

(b) Where authority is given in the will to sell the property.

10304. (a) The notice of sale given pursuant to this article shall state all of the following:

(1) Whether the sale is to be a private sale or a public auction sale.

(2) In the case of a private sale, the place at which bids or offers will be received and a day on or after which the sale will be made or, in the case of a public auction sale, the time and place of sale.

(3) The street address or other common designation or, if none, a legal description of the real property to be sold.

(b) The notice of sale may state other matters in addition to those required by subdivision (a), including terms and conditions of sale.

10305. (a) A sale of real property at public auction shall be made in the county in which the property is located. If the property is located in two or more counties, it may be sold in any one of them.

(b) A sale of real property at public auction shall be made between 9 a.m. and 9 p.m., and the sale shall be made on the day specified in the notice of sale unless the sale is postponed.

(c) The personal representative may postpone a public auction sale of real property from time to time if all of the following conditions are satisfied:

(1) The personal representative believes that the postponement will serve the interests of all persons concerned.

(2) Notice of the postponement is given by public declaration at the time and place appointed for the sale.

(3) The postponement, together with previous postponements of sale of the property, does not exceed three months in all.

10306. (a) A private sale of real property may not be made before the day stated in the notice of sale as the day on or after which the sale will be made, nor later than one year after that day.

(b) In the case of a private sale of real property, the bids or offers shall be in writing and shall be left at the place designated in the notice of sale, or be delivered to the personal representative personally or to the person specified in the notice of sale, at any time after the first publication or posting of notice of sale and before the making of the sale.

10307. Whether a sale of real property is private or at public auction, bids shall substantially comply with any terms specified in the notice of sale.

10308. (a) Except as provided in Section 10503, all sales of real property shall be reported to and be confirmed by the court before title to the property passes to the purchaser, whether the sale is a private sale or a public auction sale and notwithstanding that the property is directed by the will to be sold or authority is given in the will to sell the property.

(b) If the personal representative fails to file the report and a petition for confirmation of the sale within 30 days after the sale, the purchaser at the sale may file the report and petition for confirmation of the sale.

(c) Notice of the hearing on the petition for confirmation filed under subdivision (a) or (b) shall be given as provided in Section 1220 and posted as provided in Section 1230.

10309. (a) Except as provided in Section 10207, no sale of real property at private sale shall be confirmed by the court unless all of the following conditions are satisfied:

(1) The real property has been appraised within one year prior to the date of the confirmation hearing.

(2) The valuation date used in the appraisal described in paragraph (1) is within one year prior to the date of the confirmation hearing.

(3) The sum offered for the property is at least 90 percent of the appraised value of the property as determined by the appraisal described in paragraph (1).

(b) An appraisal of the property may be had at any time before the sale or the confirmation of sale in any of the following cases:

(1) Where the property has not been previously appraised.

(2) Where the property has not been appraised within one year before the date of the confirmation hearing.

(3) Where the valuation date used in the latest appraisal is more than one year before the date of the confirmation hearing.

(4) Where the court is satisfied that the latest appraisal is too high or too low.

(c) A new appraisal made pursuant to subdivision (b) need not be made by a probate referee if the original appraisal of the property was made by a person other than a probate referee. If the original appraisal of the property was made by a probate referee, the new appraisal may be made by the probate referee who made the original appraisal without further order of the court or further request for the appointment of a new probate referee. If appraisal by a probate

referee is required, a new probate referee shall be appointed, using the same procedure as for the appointment of an original referee, to make the new appraisal if the original probate referee is dead, has been removed, or is otherwise unable to act, or if there is other reason to appoint another probate referee.

10310. (a) Except as provided in this subdivision, at the hearing on the petition for confirmation of the sale of the real property, the court shall examine into the necessity for the sale or the advantage to the estate and the benefit to the interested persons in making the sale. If the decedent's will authorizes or directs the property to be sold, there need be no showing of the necessity of the sale or the advantage to the estate and benefit to the interested persons in making the sale.

(b) The court shall examine into the efforts of the personal representative to obtain the highest and best price for the property reasonably attainable.

(c) Any interested person may file written objections to the confirmation of the sale at or before the hearing and may testify and produce witnesses in support of the objections.

10311. (a) Subject to subdivisions (b), (c), (d), and (e), and except as provided in Section 10207, if a written offer to purchase the real property is made to the court at the hearing on the petition for confirmation of the sale, the court shall accept the offer and confirm the sale to the offeror if all of the following conditions are satisfied:

(1) The offer is for an amount at least 10 percent more on the first ten thousand dollars ($10,000) of the original bid and 5 percent more on the amount of the original bid in excess of ten thousand dollars ($10,000).

(2) The offer is made by a responsible person.

(3) The offer complies with all provisions of law.

(b) Subject to subdivisions (c), (d), and (e), if there is more than one offer that satisfies the requirements of subdivision (a), the court shall accept the highest such offer and confirm the sale to the person making that offer.

(c) The court may, in its discretion, decline to accept the offer that satisfies the requirements of subdivisions (a) and (b); and, in such case, the court shall order a new sale.

(d) If the sale returned for confirmation is on credit and the higher offer is for cash or on credit, whether on the same or different credit terms, or the sale returned for confirmation is for cash and the higher offer is on credit, the court may not consider the higher offer unless the personal representative informs the court in person or by counsel prior to confirmation of sale that the higher offer is acceptable.

(e) For the purpose of this section, the amount of the original bid and any higher offer shall be determined by the court without regard to any of the following:

(1) Any commission on the amount of the bid to which an agent or broker may be entitled under a contract with the personal

representative.

(2) Any condition of the bid that a certain amount of the bid be paid to an agent or broker by the personal representative.

10312. If notice of the sale was required, before an order is made confirming the sale it shall be proved to the satisfaction of the court that notice of the sale was given as required by this article, and the order of confirmation shall show that the proof was made.

10313. (a) The court shall make an order confirming the sale to the person making the highest offer that satisfies the requirements of this article, and directing conveyances or assignments or both to be executed, if it appears to the court that all of the following requirements are satisfied:

(1) Either the sale was authorized or directed to be made by the decedent's will or good reason existed for the sale.

(2) If notice of the sale was required, the proof required by Section 10312 has been made.

(3) The sale was legally made and fairly conducted.

(4) The amount for which the sale is to be confirmed is not disproportionate to the value of the property.

(5) In the case of a private sale, the sale complied with the requirements of Section 10309.

(6) If the sale is confirmed to the original bidder, it does not appear that a sum exceeding the original bid by at least 10 percent more on the first ten thousand dollars ($10,000) of the original bid and 5 percent more on the amount of the original bid in excess of ten thousand dollars ($10,000), exclusive of the expenses of a new sale, may be obtained.

(b) Upon its own motion or upon the request of the personal representative, the agent or broker, or any other interested person, made at the time of the confirmation hearing or at another time, the court shall fix the compensation of the agent or broker as provided in Article 3 (commencing with Section 10160).

(c) If it appears to the court that the requirements of subdivision (a) are not satisfied, the court shall vacate the sale and order a new sale.

(d) If the court orders a new sale under subdivision (c) of this section or under subdivision (c) of Section 10311, notice of the new sale shall be given and the new sale shall in all respects be conducted as if no previous sale had taken place.

10314. (a) Except as provided in subdivision (b), upon confirmation of the sale, the personal representative shall execute a conveyance to the purchaser which shall refer to the order confirming the sale and directing the conveyance to be executed. A certified copy of the order shall be recorded in the office of the recorder of the county in which the real property or any portion thereof lies.

(b) Upon confirmation of a sale of the decedent's interest under a contract for the purchase of real property by the decedent and after the purchaser has furnished a bond if one is required under

Section 10206, the personal representative shall execute an assignment of the contract to the purchaser.

(c) A conveyance made in compliance with the court order confirming the sale and directing the conveyance to be executed vests in the purchaser both of the following:

(1) All the right, title, and interest which the decedent had in the property at the time of the decedent's death.

(2) Any other or additional right, title, or interest in the property acquired by the estate of the decedent, by operation of law or otherwise, prior to the sale.

(d) An assignment made in compliance with the court order confirming the sale of the decedent's interest under a contract for the purchase of real property by the decedent vests in the purchaser all the right, title, and interest of the estate, or of the persons entitled to the interest of the decedent, at the time of sale in the property assigned. The purchaser of the decedent's interest under the contract for the purchase of the real property by the decedent has the same rights and remedies against the vendor of the property as the decedent would have had if living.

10315. (a) If a sale is made on credit, the personal representative shall take the note of the purchaser for the unpaid portion of the purchase money, with a mortgage or deed of trust on the property to secure payment of the note. The mortgage or deed of trust shall be subject only to encumbrances existing at the date of sale and such other encumbrances as the court may approve.

(b) Where property sold by the personal representative for part cash and part deferred payments consists of an undivided interest in real property or any other interest therein less than the entire ownership and the owner or owners of the remaining interests therein join in the sale, the note and deed of trust or mortgage may be made to the personal representative and such others having an interest in the property. The interest of the personal representative in the note and deed of trust or mortgage shall be in the same interest and in the same proportions as the estate's interest in the property prior to the sale.

10316. No omission, error, or irregularity in the proceedings under this article shall impair or invalidate the proceedings or the sale pursuant to an order made under this article.

Article 7. Vacating Sale for Purchaser's Default; Liability of Defaulting Purchaser for Damages

10350. (a) If after court confirmation of sale of real or personal property the purchaser fails to comply with the terms of sale, the court may, on petition of the personal representative, vacate the order of confirmation and order a resale of the property.

(b) Notice of the hearing on the petition shall be given to the defaulting purchaser as directed by the court, except that notice need not be given to a defaulting purchaser whose written consent

to the vacation of the order confirming sale is filed with the court before the hearing.

(c) Notice of the resale of the property shall be given as provided in this chapter for a sale of the property in the first instance.

(d) Proceedings after notice of the resale shall be as provided in this chapter for a sale of the property in the first instance.

(e) If the property is resold, the defaulting purchaser is liable to the estate for damages equal to the sum of the following:

(1) The difference between the contract price of the first sale and the amount paid by the purchaser at the resale.

(2) Expenses made necessary by the purchaser's breach.

(3) Other consequential damages.

10351. (a) The court may vacate the order of confirmation of a sale of real or personal property and make an order confirming the sale to the new high bidder if both of the following requirements are satisfied:

(1) A petition is filed within 60 days after confirmation of the sale showing that (A) the purchaser at the sale has failed to complete the purchase and (B) a bid has been made for the property in the same or a higher amount, on the same or better terms, and in the manner prescribed in the original notice of sale.

(2) The sale has not been vacated pursuant to Section 10350.

(b) Notice of the hearing on the petition shall be given to the defaulting purchaser as directed by the court, except that notice need not be given to a defaulting purchaser whose written consent to the vacation of the order confirming the sale is filed with the court prior to the hearing.

(c) If the report and petition for confirmation of the second sale are not filed within 60 days of the confirmation of the first sale, the property may be resold only in the manner provided in Section 10350.

Article 8. Application of Sale Proceeds of Encumbered Property; Sale to Lienholder

10360. As used in this article:

(a) "Amount secured by the lien" includes interest and any costs and charges secured by the lien.

(b) "Encumbered property" means real or personal property that is subject to a lien for a secured debt which is a valid claim against the estate and which has been allowed or approved.

(c) "Lien" means a mortgage, deed of trust, or other lien.

10361. (a) If encumbered property is sold, the purchase money shall be applied in the following order:

(1) The payment and satisfaction of the amount secured by the lien on the property sold if payment and satisfaction of the lien is required under the terms of the sale.

(2) The payment of the expenses of the sale.

(3) Application in the due course of administration.

(b) The application of the purchase money to the payment and satisfaction of the amount secured by the lien on the property sold shall be made without delay; and, subject to Section 10362, the property sold remains subject to the lien until the purchase money has been actually so applied.

10362. (a) If encumbered property is sold, the purchase money, or so much of the purchase money as is sufficient to pay the amount secured by the lien on the property sold and the expenses of the sale, may be paid to the clerk of the court. Upon the payment being so made, the lien on the property sold ceases.

(b) The clerk of court without delay shall use the money paid to the clerk under this section to pay the expenses of the sale and to pay and satisfy the amount secured by the lien on the property sold. The clerk shall at once return the surplus, if any, to the personal representative unless the court, for good cause shown and after notice to the personal representative, otherwise orders.

10363. (a) At a sale of real or personal property subject to a lien, the lienholder may become the purchaser of the property, even though no claim for the amount secured by the lien on the property sold has been, or could have been, filed, allowed, or approved.

(b) Unless the property is sold subject to the lien:

(1) If the lienholder becomes the purchaser of the property and the amount secured by the lien on the property is a valid claim against the estate and has been allowed or approved, the receipt of the lienholder for the amount due the lienholder from the proceeds of the sale is a payment pro tanto.

(2) If the lienholder becomes the purchaser of the property and no claim for the amount secured by the lien on the property has been filed, allowed, or approved, the court may at the hearing on the petition for confirmation of the sale examine into the validity and enforceability of the lien and the amount secured by the lien, and the court may authorize the personal representative to accept the receipt of the lienholder for the amount secured by the lien as payment pro tanto.

(3) If the lienholder becomes the purchaser of the property and the amount for which the property is purchased is insufficient to pay the expenses of the sale and to discharge the lienholder's lien, whether or not a claim has been filed, allowed, or approved, the lienholder shall pay to the clerk of the court an amount sufficient to cover the expenses of the sale.

(c) Nothing permitted under this section shall be deemed to be an allowance or approval of a claim based upon the lien or the amount secured by the lien.

Article 9. Damages and Recovery of Property

10380. The personal representative is liable to an interested person for damages suffered by the interested person by reason of the neglect or misconduct of the personal representative in the

proceedings in relation to a sale.

10381. In addition to any other damages for which the personal representative is liable, if the personal representative fraudulently sells real property of the estate contrary to or otherwise than under the provisions of this chapter, the person having an estate of inheritance in the real property may recover from the personal representative, as liquidated damages, an amount equal to double the fair market value of the real property sold on the date of sale.

10382. (a) No action for the recovery of property sold by a personal representative on the claim that the sale is void may be maintained by an heir or other person claiming under the decedent unless the action is commenced within whichever of the following is the later time:

(1) Three years after the settlement of the final account of the personal representative.

(2) Three years after the discovery of any fraud upon which the action is based.

(b) The limitation established by subdivision (a) is not tolled for any reason.

PART 6. INDEPENDENT ADMINISTRATION OF ESTATES

CHAPTER 1. GENERAL PROVISIONS

10400. This part shall be known and may be cited as the Independent Administration of Estates Act.

10401. As used in this part, "court supervision" means the judicial order, authorization, approval, confirmation, or instructions that would be required if authority to administer the estate had not been granted under this part.

10402. As used in this part, "full authority" means authority to administer the estate under this part that includes all the powers granted under this part.

10403. As used in this part, "limited authority" means authority to administer the estate under this part that includes all the powers granted under this part except the power to do any of the following:

(a) Sell real property.

(b) Exchange real property.

(c) Grant an option to purchase real property.

(d) Borrow money with the loan secured by an encumbrance upon real property.

10404. The personal representative may not be granted authority to administer the estate under this part if the decedent's will provides that the estate shall not be administered under this part.

10405. A special administrator may be granted authority to administer the estate under this part if the special administrator is appointed with, or has been granted, the powers of a general administrator.

10406. (a) Subject to subdivision (c), this part applies in all of the

following cases:

(1) Where authority to administer the estate is granted under this part.

(2) Where authority to administer the estate was granted under former Sections 591.1 to 591.9, inclusive, of the Probate Code on a petition filed after January 1, 1985.

(3) Where authority was granted prior to January 1, 1985, to administer the estate under the Independent Administration of Estates Act and one of the following requirements is satisfied:

(A) A petition was filed under former Section 591.1 of the Probate Code after January 1, 1985, requesting that the personal representative be authorized to administer the estate under the Independent Administration of Estates Act in effect at the time the petition was filed, and the petition was granted.

(B) A petition is filed under this part requesting that the personal representative be authorized to administer the estate under this part, and the petition is granted.

(b) Except as provided in paragraph (3) of subdivision (a), a personal representative who was granted authority prior to January 1, 1985, to administer the estate under the Independent Administration of Estates Act shall continue to administer the estate under the provisions of the Independent Administration of Estates Act that were applicable at the time the petition was granted.

(c) If the personal representative was granted independent administration authority prior to July 1, 1988, the personal representative may use that existing authority on and after July 1, 1988, to borrow money on a loan secured by an encumbrance upon real property, whether or not that existing authority includes the authority to sell real property.

CHAPTER 2. GRANTING OR REVOKING INDEPENDENT ADMINISTRATION AUTHORITY

10450. (a) To obtain authority to administer the estate under this part, the personal representative shall petition the court for that authority either in the petition for appointment of the personal representative or in a separate petition filed in the estate proceedings.

(b) The petition may request either of the following:

(1) Full authority to administer the estate under this part.

(2) Limited authority to administer the estate under this part.

10451. (a) If the authority to administer the estate under this part is requested in the petition for appointment of the personal representative, notice of the hearing on the petition shall be given for the period and in the manner applicable to the petition for appointment.

(b) Where proceedings for the administration of the estate are pending at the time a petition is filed under Section 10450:

(1) Notice of the hearing on the petition shall be given as

provided in Section 1220.

(2) In addition to the notice required by paragraph (1), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(A) Each known heir whose interest in the estate is affected by the petition.

(B) Each known devisee whose interest in the estate is affected by the petition.

(C) Each person named as personal representative in the will of the decedent.

(c) The notice of hearing of the petition for authority to administer the estate under this part, whether included in the petition for appointment or in a separate petition, shall include the substance of the following statement: "The petition requests authority to administer the estate under the Independent Administration of Estates Act. This will avoid the need to obtain court approval for many actions taken in connection with the estate. However, before taking certain actions, the personal representative will be required to give notice to interested persons unless they have waived notice or have consented to the proposed action. The petition will be granted unless good cause is shown why it should not be."

10452. (a) Any interested person may object to the granting of authority to administer the estate under this part by filing at or before the hearing a written statement setting forth the objection or by appearing at the hearing and making the objection.

(b) Unless the court determines that the objecting party has shown good cause why the authority requested in the petition should not be granted, the court shall grant the requested authority. If the objecting party has shown good cause why only limited authority should be granted, the court shall grant only limited authority.

(c) The letters shall be endorsed to the effect that the letters are issued under this part and, if the authority granted is limited authority, the endorsement shall include a statement that the personal representative has all of the powers granted by this part except the power to do any of the following:

(1) Sell real property.

(2) Exchange real property.

(3) Grant an option to purchase real property.

(4) Borrow money with the loan secured by an encumbrance upon real property.

10453. (a) If the personal representative is otherwise required to file a bond and has full authority, the court, in its discretion, shall fix the amount of the bond at not more than the estimated value of the personal property, the estimated net proceeds of the real property authorized to be sold under this part, and the estimated value of the probable annual gross income of all of the property belonging to the estate, or, if the bond is to be given by personal sureties, at not less than twice that amount.

(b) If the personal representative is otherwise required to file a

bond and has limited authority, the court, in its discretion, shall fix the amount of the bond at not more than the estimated value of the personal property and the estimated value of the probable annual gross income of all of the property belonging to the estate, or, if the bond is to be given by personal sureties, at not less than twice that amount.

10454. (a) Any interested person may file a petition requesting that the court make either of the following orders:

(1) An order revoking the authority of the personal representative to continue administration of the estate under this part.

(2) An order revoking the full authority of the personal representative to administer the estate under this part and granting the personal representative limited authority to administer the estate under this part.

(b) The petition shall set forth the basis for the requested order.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220. In addition, the personal representative shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing. Service on the personal representative shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court.

(d) If the court determines that good cause has been shown, the court shall make an order revoking the authority of the personal representative to continue administration of the estate under this part. Upon the making of the order, new letters shall be issued without the endorsement described in subdivision (c) of Section 10452.

(e) If the personal representative was granted full authority and the court determines that good cause has been shown, the court shall make an order revoking the full authority and granting the personal representative limited authority. Upon the making of the order, new letters shall be issued with the endorsement described in subdivision (c) of Section 10452 that is required where the authority granted is limited authority.

CHAPTER 3. ADMINISTRATION UNDER INDEPENDENT ADMINISTRATION AUTHORITY

Article 1. General Provisions

10500. (a) Subject to the limitations and conditions of this part, a personal representative who has been granted authority to administer the estate under this part may administer the estate as provided in this part without court supervision, but in all other respects the personal representative shall administer the estate in the same manner as a personal representative who has not been granted authority to administer the estate under this part.

(b) Notwithstanding subdivision (a), the personal representative may obtain court supervision as provided in this code of any action to be taken by the personal representative during administration of the estate.

10501. (a) Notwithstanding any other provision of this part, whether the personal representative has been granted full authority or limited authority, a personal representative who has obtained authority to administer the estate under this part is required to obtain court supervision, in the manner provided in this code, for any of the following actions:

(1) Allowance of the personal representative's commissions.

(2) Allowance of attorney's fees.

(3) Settlement of accountings.

(4) Preliminary and final distributions and discharge.

(5) Sale of property of the estate to the personal representative or to the attorney for the personal representative.

(6) Exchange of property of the estate for property of the personal representative or for property of the attorney for the personal representative.

(7) Grant of an option to purchase property of the estate to the personal representative or to the attorney for the personal representative.

(8) Allow, pay, or compromise a claim of the personal representative, or the attorney for the personal representative, against the estate.

(9) Compromise or settle a claim, action, or proceeding by the estate against the personal representative or against the attorney for the personal representative.

(10) Extend, renew, or modify the terms of a debt or other obligation of the personal representative, or the attorney for the personal representative, owing to or in favor of the decedent or the estate.

(b) Notwithstanding any other provision of this part, a personal representative who has obtained only limited authority to administer the estate under this part is required to obtain court supervision, in the manner provided in this code, for any of the following actions:

(1) Sale of real property.

(2) Exchange of real property.

(3) Grant of an option to purchase real property.

(4) Borrow money with the loan secured by an encumbrance upon real property.

(c) Paragraphs (5) to (10), inclusive, of subdivision (a) do not apply to a transaction between the personal representative as such and the personal representative as an individual where all of the following requirements are satisfied:

(1) Either (A) the personal representative is the sole beneficiary of the estate or (B) all the known heirs or devisees have consented to the transaction.

(2) The period for filing creditor's claims has expired.

(3) No request for special notice is on file or all persons who filed a request for special notice have consented to the transaction.

(4) The claim of each creditor who filed a claim has been paid, settled, or withdrawn, or the creditor has consented to the transaction.

10502. (a) Subject to the conditions and limitations of this part and to Section 9600, a personal representative who has been granted authority to administer the estate under this part has the powers described in Article 2 (commencing with Section 10510), Article 3 (commencing with Section 10530), and Article 4 (commencing with Section 10550).

(b) The will may restrict the powers that the personal representative may exercise under this part.

10503. Subject to the limitations and requirements of this part, when the personal representative exercises the authority to sell property of the estate under this part, the personal representative may sell the property either at public auction or private sale, and with or without notice, for such price, for cash or on credit, and upon such terms and conditions as the personal representative may determine, and the requirements applicable to court confirmation of sales of real property (including, but not limited to, publication of notice of sale, court approval of agents' and brokers' commissions, sale at not less than 90 percent of appraised value, and court examination into the necessity for the sale, advantage to the estate and benefit to interested persons, and efforts of the personal representative to obtain the highest and best price for the property reasonably attainable), and the requirements applicable to court confirmation of sales of personal property, do not apply to the sale.

Article 2. Powers Exercisable Only After Giving Notice of Proposed Action

10510. The personal representative may exercise the powers described in this article only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied.

10511. The personal representative who has full authority has the power to sell or exchange real property of the estate.

10512. The personal representative has the power to sell or incorporate any of the following:

(a) An unincorporated business or venture in which the decedent was engaged at the time of the decedent's death.

(b) An unincorporated business or venture which was wholly or partly owned by the decedent at the time of the decedent's death.

10513. The personal representative has the power to abandon tangible personal property where the cost of collecting, maintaining, and safeguarding the property would exceed its fair market value.

10514. (a) Subject to subdivision (b), the personal representative has the following powers:

(1) The power to borrow.

(2) The power to place, replace, renew, or extend any encumbrance upon any property of the estate.

(b) Only a personal representative who has full authority has the power to borrow money with the loan secured by an encumbrance upon real property.

10515. The personal representative who has full authority has the power to grant an option to purchase real property of the estate for a period within or beyond the period of administration.

10516. If the will gives a person the option to purchase real or personal property and the person has complied with the terms and conditions stated in the will, the personal representative has the power to convey or transfer the property to the person.

10517. The personal representative has the power to convey or transfer real or personal property to complete a contract entered into by the decedent to convey or transfer the property.

10518. The personal representative has the power to determine any of the following:

(a) A third-party claim to real or personal property if the decedent died in possession of, or holding title to, the property.

(b) The decedent's claim to real or personal property title to or possession of which is held by another.

10519. The personal representative has the power to make a disclaimer.

Article 3. Powers the Exercise of Which Requires Giving of Notice of Proposed Action Under Some Circumstances

10530. Except to the extent that this article otherwise provides, the personal representative may exercise the powers described in this article without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

10531. (a) The personal representative has the power to manage and control property of the estate. Except as provided in subdivision (b), the personal representative may exercise this power without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) in any case where a provision of Chapter 3 (commencing with Section 10500) governing the exercise of a specific power so requires.

10532. (a) The personal representative has the power to enter into a contract in order to carry out the exercise of a specific power granted by this part, including, but not limited to, the powers granted by Sections 10531 and 10551. Except as provided in subdivision (b), the personal representative may exercise this power without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the

requirements of Chapter 4 (commencing with Section 10580) where the contract is one that by its provisions is not to be fully performed within two years, except that the personal representative is not required to comply with those requirements if the personal representative has the unrestricted right under the contract to terminate the contract within two years.

(c) Nothing in this section excuses compliance with the requirements of Chapter 4 (commencing with Section 10580) when the contract is made to carry out the exercise of a specific power and the provision that grants that power requires compliance with Chapter 4 (commencing with Section 10580) for the exercise of the power.

10533. (a) The personal representative has the power to do all of the following:

(1) Deposit money belonging to the estate in an insured account in a financial institution in this state.

(2) Invest money of the estate in any one or more of the following:

(A) Direct obligations of the United States, or of the State of California, maturing not later than one year from the date of making the investment.

(B) An interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant to Section 9.18 of Part 9 of Title 12 of the Code of Federal Regulations, the portfolios of which are limited to United States government obligations maturing not later than five years from the date of investment and to repurchase agreements fully collateralized by United States government obligations.

(C) Units of a common trust fund described in Section 1564 of the Financial Code. The common trust fund shall have as its objective investment primarily in short term fixed income obligations and shall be permitted to value investments at cost pursuant to regulations of the appropriate regulatory authority.

(D) Eligible securities for the investment of surplus state moneys as provided for in Section 16430 of the Government Code.

(3) Invest money of the estate in any manner provided by the will.

(b) Except as provided in subdivision (c), the personal representative may exercise the powers described in subdivision (a) without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(c) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative exercises the power to make any investment pursuant to the power granted by subparagraph (D) of paragraph (2) of subdivision (a) or paragraph (3) of subdivision (a), except that the personal representative may invest in direct obligations of the United States, or of the State of California, maturing not later than one year from the date of making the investment without complying with the requirements of Chapter 4

(commencing with Section 10580).

10534. (a) Subject to the partnership agreement and the provisions of the Uniform Partnership Act (Chapter 1 (commencing with Section 15001) of Title 2 of the Corporations Code), the personal representative has the power to continue as a general partner in any partnership in which the decedent was a general partner at the time of death.

(b) The personal representative has the power to continue operation of any of the following:

(1) An unincorporated business or venture in which the decedent was engaged at the time of the decedent's death.

(2) An unincorporated business or venture which was wholly or partly owned by the decedent at the time of the decedent's death.

(c) Except as provided in subdivision (d), the personal representative may exercise the powers described in subdivisions (a) and (b) without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(d) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) if the personal representative continues as a general partner under subdivision (a), or continues the operation of any unincorporated business or venture under subdivision (b), for a period of more than six months from the date letters are first issued to a personal representative.

10535. (a) The personal representative has the power to pay a reasonable family allowance. Except as provided in subdivision (b), the personal representative may exercise this power without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) for all of the following:

(1) Making the first payment of a family allowance.

(2) Making the first payment of a family allowance for a period commencing more than 12 months after the death of the decedent.

(3) Making any increase in the amount of the payment of a family allowance.

10536. (a) The personal representative has the power to enter as lessor into a lease of property of the estate for any purpose (including, but not limited to, exploration for and production or removal of minerals, oil, gas, or other hydrocarbon substances or geothermal energy, including a community oil lease or a pooling or unitization agreement) for such period, within or beyond the period of administration, and for such rental or royalty or both, and upon such other terms and conditions as the personal representative may determine. Except as provided in subdivisions (b) and (c), the personal representative may exercise this power without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative enters into a lease of real property for a term in excess of one year. If the lease gives the lessee the right to extend the term of the lease, the lease shall be considered as if the right to extend has been exercised.

(c) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative enters into a lease of personal property and the lease is one described in subdivision (b) of Section 10532.

10537. (a) The personal representative has the power to sell personal property of the estate or to exchange personal property of the estate for other property upon such terms and conditions as the personal representative may determine. Except as provided in subdivision (b), the personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) in exercising this power.

(b) The personal representative may exercise the power granted by subdivision (a) without giving notice of proposed action under Chapter 4 (commencing with Section 10580) in case of the sale or exchange of any of the following:

(1) A security sold on an established stock or bond exchange.

(2) A security designated as a national market system security on an interdealer quotation system, or subsystem thereof, by the National Association of Securities Dealers, Inc., sold through a broker-dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker-dealer.

(3) Personal property referred to in Section 10202 or 10259 when sold for cash.

(4) A security described in Section 10200 surrendered for redemption or conversion.

10538. (a) The personal representative has the following powers:

(1) The power to grant an exclusive right to sell property for a period not to exceed 90 days.

(2) The power to grant to the same broker one or more extensions of an exclusive right to sell property, each extension being for a period not to exceed 90 days.

(b) Except as provided in subdivision (c), the personal representative may exercise the powers described in subdivision (a) without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(c) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative grants to the same broker an extension of an exclusive right to sell property and the period of the extension, together with the periods of the original exclusive right to sell the property and any previous extensions of that right, is more than 270 days.

Article 4. Powers Exercisable Without Giving Notice of Proposed Action

10550. The personal representative may exercise the powers described in this article without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

10551. In addition to the powers granted to the personal representative by other sections of this chapter, the personal representative has all the powers that the personal representative could exercise without court supervision under this code if the personal representative had not been granted authority to administer the estate under this part.

10552. The personal representative has the power to do all of the following:

(a) Allow, pay, reject, or contest any claim by or against the estate.

(b) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate.

(c) Release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

10553. The personal representative has the power to do all of the following:

(a) Commence and maintain actions and proceedings for the benefit of the estate.

(b) Defend actions and proceedings against the decedent, the personal representative, or the estate.

10554. The personal representative has the power to extend, renew, or in any manner modify the terms of an obligation owing to or in favor of the decedent or the estate.

10555. The personal representative has the power to convey or transfer property in order to carry out the exercise of a specific power granted by this part.

10556. The personal representative has the power to pay all of the following:

(a) Taxes and assessments.

(b) Expenses incurred in the collection, care, and administration of the estate.

10557. The personal representative has the power to purchase an annuity from an insurer admitted to do business in this state to satisfy a devise of an annuity or other direction in the will for periodic payments to a devisee.

10558. The personal representative has the power to exercise an option right that is an asset of the estate.

10559. The personal representative has the power to purchase securities or commodities required to perform an incomplete contract of sale where the decedent died having sold but not delivered securities or commodities not owned by the decedent.

10560. The personal representative has the power to hold a security in the name of a nominee or in any other form without

disclosure of the estate, so that title to the security may pass by delivery.

10561. The personal representative has the power to exercise security subscription or conversion rights.

10562. The personal representative has the power to make repairs and improvements to real and personal property of the estate.

10563. The personal representative has the power to accept a deed to property which is subject to a mortgage or deed of trust in lieu of foreclosure of the mortgage or sale under the deed of trust.

10564. The personal representative has the power to give a partial satisfaction of a mortgage or to cause a partial reconveyance to be executed by a trustee under a deed of trust held by the estate.

CHAPTER 4. NOTICE OF PROPOSED ACTION PROCEDURE

Article 1. Notice of Proposed Action Procedure

10580. (a) A personal representative who has been granted authority to administer the estate under this part shall give notice of proposed action as provided in this article prior to the taking of the proposed action without court supervision if the provision of Chapter 3 (commencing with Section 10500) giving the personal representative the power to take the action so requires. Nothing in this subdivision authorizes a personal representative to take an action under this part if the personal representative does not have the power to take the action under this part.

(b) A personal representative who has been granted authority to administer the estate under this part may give notice of proposed action as provided in this article even if the provision of Chapter 3 (commencing with Section 10500) giving the personal representative the power to take the action permits the personal representative to take the action without giving notice of proposed action. Nothing in this subdivision requires the personal representative to give notice of proposed action where not required under subdivision (a) or authorizes a personal representative to take any action that the personal representative is not otherwise authorized to take.

10581. Except as provided in Sections 10582 and 10583, notice of proposed action shall be given to all of the following:

(a) Each known devisee whose interest in the estate is affected by the proposed action.

(b) Each known heir whose interest in the estate is affected by the proposed action.

(c) Each person who has filed a request for special notice pursuant to Section 1250.

(d) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the proposed action.

10582. Notice of proposed action need not be given to any person

who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

10583. (a) Notice of proposed action need not be given to any person who, in writing, waives the right to notice of proposed action with respect to the particular proposed action. The waiver may be executed at any time before or after the proposed action is taken. The waiver shall describe the particular proposed action and may waive particular aspects of the notice, such as the delivery, mailing, or time requirements of Section 10586, or the giving of the notice in its entirety for the particular proposed action.

(b) Notice of proposed action need not be given to any person who has executed a Statutory Waiver of Notice of Proposed Action Form that satisfies the requirements of Section 10600 and in that form has made either of the following:

(1) A general waiver of the right to notice of proposed action.

(2) A waiver of the right to notice of proposed action for all transactions of a type which includes the particular proposed action.

10584. (a) A waiver or consent may be revoked only in writing and is effective only when the writing is received by the personal representative.

(b) A copy of the revocation may be filed with the court, but the effectiveness of the revocation is not dependent upon a copy being filed with the court.

10585. (a) The notice of proposed action shall state all of the following:

(1) The name and mailing address of the personal representative.

(2) The person and telephone number to call to get additional information.

(3) The action proposed to be taken, with a reasonably specific description of the action. Where the proposed action involves the sale or exchange of real property, or the granting of an option to purchase real property, the notice of proposed action shall state the material terms of the transaction, including, if applicable, the sale price and the amount of, or method of calculating, any commission or compensation paid or to be paid to an agent or broker in connection with the transaction.

(4) The date on or after which the proposed action is to be taken.

(b) The notice of proposed action may be given using the most current Notice of Proposed Action form prescribed by the Judicial Council.

(c) If the most current form prescribed by the Judicial Council is not used to give notice of proposed action, the notice of proposed action shall satisfy all of the following requirements:

(1) The notice of proposed action shall be in substantially the same form as the form prescribed by the Judicial Council.

(2) The notice of proposed action shall contain the statements described in subdivision (a).

(3) The notice of proposed action shall contain a form for objecting to the proposed action in substantially the form set out in

the Judicial Council form.

10586. The notice of proposed action shall be mailed or personally delivered to each person required to be given notice of proposed action not less than 15 days before the date specified in the notice of proposed action on or after which the proposed action is to be taken. If mailed, the notice of proposed action shall be addressed to the person at the person's last-known address. Sections 1215 and 1216 apply to the mailing or delivery of the notice of proposed action.

10587. (a) Any person entitled to notice of proposed action under Section 10581 may object to the proposed action as provided in this section.

(b) The objection to the proposed action is made by delivering or mailing a written objection to the proposed action to the personal representative at the address stated in the notice of proposed action. The person objecting to the proposed action either may use the Judicial Council form or may make the objection in any other writing that identifies the proposed action with reasonable certainty and indicates that the person objects to the taking of the proposed action.

(c) The personal representative is deemed to have notice of the objection to the proposed action if it is delivered or received at the address stated in the notice of proposed action before whichever of the following times is the later:

(1) The date specified in the notice of proposed action on or after which the proposed action is to be taken.

(2) The date the proposed action is actually taken.

10588. (a) Any person who is entitled to notice of proposed action for a proposed action described in subdivision (a) of Section 10580, or any person who is given notice of a proposed action described in subdivision (b) of Section 10580, may apply to the court having jurisdiction over the proceeding for an order restraining the personal representative from taking the proposed action without court supervision. The court shall grant the requested order without requiring notice to the personal representative and without cause being shown for the order.

(b) The personal representative is deemed to have notice of the restraining order if it is served upon the personal representative in the same manner as is provided for in Section 415.10 or 415.30 of the Code of Civil Procedure, or in the manner authorized by the court, before whichever of the following times is the later:

(1) The date specified in a notice of proposed action on or after which the proposed action is to be taken.

(2) The date the proposed action is actually taken.

10589. (a) If the proposed action is one that would require court supervision if the personal representative had not been granted authority to administer the estate under this part and the personal representative has notice of a written objection made under Section 10587 to the proposed action or a restraining order issued under Section 10588, the personal representative shall, if the personal representative desires to take the proposed action, take the proposed

action under the provisions of this code dealing with court supervision of that kind of action.

(b) If the proposed action is one that would not require court supervision even if the personal representative had not been granted authority to administer the estate under this part but the personal representative has given notice of the proposed action and has notice of a written objection made under Section 10587 to the proposed action or a restraining order issued under Section 10588, the personal representative shall, if he or she desires to take the proposed action, request instructions from the court concerning the proposed action and may take the proposed action only under such order as may be entered by the court.

(c) A person who objects to a proposed action as provided in Section 10587 or serves a restraining order issued under Section 10588 in the manner provided in that section shall be given notice of any hearing on a petition for court authorization or confirmation of the proposed action.

10590. (a) Except as provided in subdivision (c), only a person described in Section 10581 has a right to have the court review the proposed action after it has been taken or otherwise to object to the proposed action after it has been taken; and, except as provided in subdivisions (b) and (c), a person described in Section 10581 waives the right to have the court review the proposed action after it has been taken, or otherwise to object to the proposed action after it has been taken, if either of the following circumstances exists:

(1) The person has been given notice of a proposed action, as provided in Sections 10580 to 10586, inclusive, and fails to object as provided in subdivision (d).

(2) The person has waived notice of or consented to the proposed action as provided in Sections 10582 to 10584, inclusive.

(b) Unless the person has waived notice of or consented to the proposed action as provided in Sections 10582 to 10584, inclusive, the court may review the action taken upon motion of a person described in Section 10581 who establishes that he or she did not actually receive the notice of proposed action before the time to object under subdivision (d) expires.

(c) The court may review the action of the personal representative on its own motion where necessary to protect the interests of an heir or devisee who establishes all of the following:

(1) At the time the notice was given, the heir or devisee lacked capacity to object to the proposed action or was a minor.

(2) No notice of proposed action was actually received by the guardian, conservator, or other legal representative of the heir or devisee.

(3) The guardian, conservator, or other legal representative did not waive notice of proposed action.

(4) The guardian, conservator, or other legal representative did not consent to the proposed action.

(d) For the purposes of this section, an objection to a proposed

action is made only by one or both of the following methods:

(1) Delivering or mailing a written objection as provided in Section 10587 within the time specified in subdivision (c) of that section.

(2) Serving a restraining order obtained under Section 10588 in the manner prescribed and within the time specified in subdivision (b) of that section.

10591. (a) The failure of the personal representative to comply with subdivision (a) of Section 10580 and with Sections 10581, 10585, 10586, and 10589, and the taking of the action by the personal representative without such compliance, does not affect the validity of the action so taken or the title to any property conveyed or transferred to bona fide purchasers or the rights of third persons who, dealing in good faith with the personal representative, changed their position in reliance upon the action, conveyance, or transfer without actual notice of the failure of the personal representative to comply with those provisions.

(b) No person dealing with the personal representative has any duty to inquire or investigate whether or not the personal representative has complied with the provisions listed in subdivision (a).

10592. (a) In a case where notice of proposed action is required by this chapter, the court in its discretion may remove the personal representative from office unless the personal representative does one of the following:

(1) Gives notice of proposed action as provided in this chapter.

(2) Obtains a waiver of notice of proposed action as provided in this chapter.

(3) Obtains a consent to the proposed action as provided in this chapter.

(b) The court in its discretion may remove the personal representative from office if the personal representative takes a proposed action in violation of the provisions of Section 10589.

Article 2. Statutory Form for Waiver of Notice of Proposed Action

10600. (a) The Judicial Council may prescribe a Statutory Waiver of Notice of Proposed Action Form. A form prescribed by the Judicial Council pursuant to this subdivision shall include the substance of the warning set out in subdivision (b). If the Judicial Council prescribes a form pursuant to this subdivision, that form shall be used instead of the form set out in subdivision (b).

(b) Except as provided in subdivision (a), a Statutory Waiver of Notice of Proposed Action Form shall be in substantially the form set out in this subdivision and shall include the warning set out in this subdivision, either printed in not less than 10-point boldface type or a reasonable equivalent thereof or typed in all capital letters:

STATUTORY WAIVER OF PROPOSED ACTION FORM
(California Probate Code Section 10600)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF _____

Estate of No. _____

_____
(deceased)

WARNING. THE LAW REQUIRES THAT THE PERSONAL REPRESENTATIVE GIVE YOU NOTICE OF CERTAIN ACTIONS THE PERSONAL REPRESENTATIVE PROPOSES TO TAKE WITH RESPECT TO THE ESTATE. THE PERSONAL REPRESENTATIVE MUST GIVE YOU THIS NOTICE BEFORE TAKING THE ACTION.

YOU HAVE THE RIGHT (1) TO OBJECT TO A PROPOSED ACTION AND (2) TO REQUIRE THAT THE COURT SUPERVISE THE PROPOSED ACTION. IF YOU DO NOT OBJECT BEFORE THE PERSONAL REPRESENTATIVE ACTS, THEN YOU LOSE THAT RIGHT AND YOU CANNOT OBJECT LATER.

IF YOU SIGN THIS FORM, YOU GIVE UP YOUR RIGHT TO RECEIVE NOTICE. THIS MEANS THAT YOU GIVE THE PERSONAL REPRESENTATIVE THE RIGHT TO TAKE ACTIONS CONCERNING THE ESTATE WITHOUT FIRST GIVING YOU THE NOTICE REQUIRED BY LAW, AND YOU CANNOT OBJECT AFTER THE ACTION IS TAKEN.

IF YOU SIGN THIS FORM, YOU MUST ALSO CHECK ONE OF THE BOXES BELOW TO INDICATE WHETHER YOU GIVE UP YOUR RIGHT TO RECEIVE:

(1) A NOTICE OF ANY AND ALL ACTIONS THE PERSONAL REPRESENTATIVE MAY DECIDE TO TAKE.

(2) A NOTICE OF ANY OF THE PARTICULAR KINDS OF ACTIONS YOU LIST IN THIS FORM.

YOU HAVE THE RIGHT TO REVOKE (CANCEL) THIS WAIVER AT ANY TIME. A REVOCATION MUST BE IN WRITING AND IS NOT EFFECTIVE UNTIL IT IS ACTUALLY RECEIVED BY THE PERSONAL REPRESENTATIVE.

IF YOU DO NOT UNDERSTAND THIS FORM, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

1. The name of the personal representative of the estate of the deceased and the address to which notices to the personal representative may be delivered or mailed are:

_____
_____
_____

2. The personal representative has authority to administer the estate without court supervision under the Independent Administration of Estates Act (California Probate Code Sections 10400–10600)

3. By signing below, I waive my right to receive prior notice of (check only one box to indicate your choice):

☐ (a) Any and all actions the personal representative is authorized to take under the Independent Administration of Estates Act.

☐ (b) Any of the kinds of transactions listed below that the personal representative is authorized to take under the Independent Administration of Estates Act.

_____

_____

_____

_____

_____

_____

_____

_____.

Dated: _____

_____

(SIGN HERE)

Print your name: _____

Your address: _____

_____

PART 9. PAYMENT OF DEBTS

CHAPTER 1. DEFINITIONS AND PRELIMINARY PROVISIONS

Article 1. Definitions

11400. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this part.

11401. "Debt" means:

(a) A claim that is established under Part 4 (commencing with Section 9000) or that is otherwise payable in the course of administration.

(b) An expense of administration.

(c) A charge against the estate including, but not limited to, taxes, expenses of last illness, and family allowance.

11402. "Wage claim" means a claim for wages, not exceeding two thousand dollars ($2,000), of each employee of the decedent for work

done or personal services rendered within 90 days before the death of the decedent.

Article 2. Preliminary Provisions

11405. (a) This part applies in any proceeding for the administration of a decedent's estate commenced on or after July 1, 1988.

(b) The applicable law in effect before July 1, 1988, governing the subject matter of this part continues to apply in any proceeding for administration of a decedent's estate commenced before July 1, 1988, notwithstanding its repeal by the act that enacted this section.

CHAPTER 2. GENERAL PROVISIONS

11420. (a) Debts shall be paid in the following order of priority among classes of debts, except that debts owed to the United States or to this state that have preference under the laws of the United States or of this state shall be given the preference required by such laws:

(1) Expenses of administration.

(2) Funeral expenses.

(3) Expenses of last illness.

(4) Family allowance.

(5) Wage claims.

(6) Obligations secured by a mortgage, deed of trust, or other lien, including, but not limited to, a judgment lien, in the order of their priority, so far as they may be paid out of the proceeds of the property subject to the lien. If the proceeds are insufficient, the part of the obligation remaining unsatisfied shall be classed with general debts.

(7) General debts, including judgments not secured by a lien and all other debts not included in a prior class.

(b) Except as otherwise provided by statute, the debts of each class are without preference or priority one over another. No debt of any class may be paid until all those of prior classes are paid in full. If property in the estate is insufficient to pay all debts of any class in full, each debt in that class shall be paid a proportionate share.

11421. As soon as the personal representative has sufficient funds, after retaining sufficient funds to pay expenses of administration and debts owed to the United States or to this state that have preference under the laws of the United States or of this state, the personal representative shall pay the following debts:

(a) Funeral expenses.

(b) Expenses of last illness.

(c) Family allowance.

(d) Wage claims.

11422. (a) Except as provided in Section 11421, the personal representative is not required to pay a debt until payment has been

ordered by the court.

(b) On the settlement of any account of the personal representative after the expiration of four months after the date letters are first issued to a general personal representative, the court shall order payment of debts, as the circumstances of the estate permit. If property in the estate is insufficient to pay all of the debts, the order shall specify the amount to be paid to each creditor.

(c) If the estate will be exhausted by the payment ordered, the account of the personal representative constitutes a final account, and notice of hearing shall be the notice given for the hearing of a final account. The personal representative is entitled to a discharge when the personal representative has complied with the terms of the order.

(d) Nothing in this section precludes settlement of an account of a personal representative for payment of a debt made without prior court authorization.

11423. (a) Interest accrues on a debt from the date the court orders payment of the debt until the date the debt is paid. Interest accrues at the legal rate on judgments.

(b) Notwithstanding subdivision (a), in the case of a debt based on a written contract, interest accrues at the rate and in accordance with the terms of the contract. The personal representative may, by order of the court, pay all or part of the interest accumulated and unpaid at any time when there are sufficient funds, whether the debt is then due or not.

(c) Notwithstanding subdivision (a), in the case of a debt for unpaid taxes or any other debt for which interest is expressly provided by statute, interest accrues at the rate and in accordance with the terms of the statute.

11424. (a) The personal representative shall pay a debt to the extent of the order for payment of the debt, and is liable personally and on the bond, if any, for failure to make the payment.

(b) An order for payment of debt may be enforced in the same manner as enforcement of a money judgment under the Enforcement of Judgments Law.

11425. If a creditor whose debt is not due waives interest for the time until the debt is due, the creditor is entitled to payment of the debt.

11426. (a) Notwithstanding any other statute, the court may in its discretion appoint a trustee to whom payment of a debt that is contingent or is payable in installments shall be made, with the direction that the trustee invest the payment in investments that would be proper for a personal representative or as authorized by the court. The court in determining the amount of the payment shall compute the present value of the debt, giving consideration to a reasonable interest rate on the amount to be invested.

(b) The trustee shall pay the debt as ordered by the court. On completion of payment, any excess in possession of the trustee shall be paid or distributed in accordance with the order for distribution.

11427. Except as otherwise provided in this part, if a debt is not due or is contingent, or if a claim is disputed, the amount of the debt or claim or the part that would be payable if the debt were due or absolute or the claim established, shall be paid into court. The amount paid into court shall remain there, to be paid to the creditor when the debt is due or absolute or the claim is established, or, if the claim is not established, to be paid or distributed as the circumstances of the estate require.

11428. (a) If an estate is in all other respects ready to be closed, and it appears to the satisfaction of the court, on affidavit or evidence taken in open court, that a debt has not been and cannot be paid because the creditor cannot be found, the court or judge shall make an order fixing the amount of the payment and directing the personal representative to deposit the payment with the county treasurer of the county in which the proceeding is pending.

(b) The county treasurer shall give a receipt for the deposit, for which the county treasurer is liable on the official bond. The receipt shall be treated by the court or judge in favor of the personal representative with the same force and effect as if executed by the creditor.

(c) A deposit with the county treasurer under the provisions of this section shall be received, accounted for, and disposed of as provided by Section 1444 of the Code of Civil Procedure. A deposit in the State Treasury under the provisions of this section shall be deemed to be made under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

11429. (a) Where the accounts of the personal representative have been settled and an order made for the payment of debts and distribution of the estate, a creditor who is not paid, whether or not included in the order for payment, has no right to require contribution from creditors who are paid or from distributees.

(b) Nothing in this section precludes recovery against the personal representative personally or on the bond, if any, by a creditor who is not paid.

CHAPTER 3. ALLOCATION OF DEBTS BETWEEN ESTATE AND SURVIVING SPOUSE

11440. If it appears that a debt of the decedent has been paid or is payable in whole or in part by the surviving spouse, or that a debt of the surviving spouse has been paid or is payable in whole or in part from property in the decedent's estate, the personal representative, the surviving spouse, or a beneficiary may, at any time before an order for final distribution is made, petition for an order to allocate the debt.

11441. The petition shall include a statement of all of the following:

(a) All debts of the decedent and surviving spouse known to the

petitioner that are alleged to be subject to allocation and whether paid in whole or part or unpaid.

(b) The reason why the debts should be allocated.

(c) The proposed allocation and the basis for allocation alleged by the petitioner.

11442. If it appears from the petition that allocation would be affected by the value of the separate property of the surviving spouse and any community property and quasi-community property not administered in the estate and if an inventory and appraisal of the property has not been provided by the surviving spouse, the court shall make an order to show cause why the information should not be provided.

11443. The petitioner shall give notice of the hearing as provided in Section 1220, together with a copy of the petition and the order to show cause, if any.

11444. (a) The personal representative and the surviving spouse may provide for allocation by agreement and, on a determination by the court that the agreement substantially protects the rights of interested persons, the allocation provided in the agreement shall be ordered by the court.

(b) In the absence of an agreement, each debt of the decedent shall be apportioned based on all of the property of the spouses liable for the debt at the date of death that is not exempt from enforcement of a money judgment, in the proportion determined by the value of the property less any liens and encumbrances at the date of death, adjusted to take into account any right of reimbursement that would have been available if the property were applied to the debt at the date of death, and the debt shall be allocated accordingly.

11445. On making a determination as provided in this chapter, the court shall make an order that:

(a) Directs the personal representative to make payment of the amounts allocated to the estate by payment to the surviving spouse or creditors.

(b) Directs the personal representative to charge amounts allocated to the surviving spouse against any property or interests of the surviving spouse that are in the possession or control of the personal representative. To the extent that property or interests of the surviving spouse in the possession or control of the personal representative are insufficient to satisfy the allocation, the court order shall summarily direct the surviving spouse to pay the allocation to the personal representative.

11446. Notwithstanding any other statute, funeral expenses and expenses of last illness shall be charged against the estate of the decedent and shall not be allocated to, or charged against the community share of, the surviving spouse, whether or not the surviving spouse is financially able to pay the expenses and whether or not the surviving spouse or any other person is also liable for the expenses.

PART 10. DISTRIBUTION OF ESTATES

PART 11. CLOSING ESTATE ADMINISTRATION

PART 12. ADMINISTRATION OF ESTATES OF MISSING PERSONS PRESUMED DEAD

12400. Unless the provision or context otherwise requires, as used in this part, "missing person" means a person who is presumed to be dead under Section 12401.

12401. In proceedings under this part, a person who has not been seen or heard from for a continuous period of five years by those who are likely to have seen or heard from that person, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The person's death is presumed to have occurred at the end of the period unless there is sufficient evidence to establish that death occurred earlier.

12402. Subject to the provisions of this part, the estate of a missing person may be administered in the manner provided generally for the administration of estates of deceased persons.

12403. (a) If the missing person was a resident of this state when last seen or heard from, the superior court of the county of the person's last known place of residence has jurisdiction for the purposes of this part.

(b) If the missing person was a nonresident of this state when last seen or heard from, the superior court of a county where real property of the missing person is located, or of a county where personal property is located if the missing person has no real property in this state, has jurisdiction for the purposes of this part.

12404. (a) A petition may be filed in the court having jurisdiction under Section 12403 for the administration of the estate of a missing person.

(b) The petition may be filed by any person who may be appointed as a personal representative, other than a person described in paragraph (12) of subdivision (a) of Section 422.

(c) In addition to the matters otherwise required in a petition for administration of the estate, the petition shall state all of the following:

(1) The last known place of residence and the last known address of the missing person.

(2) The time and circumstances when the missing person was last seen or heard from.

(3) That the missing person has not been seen or heard from for a continuous period of five years by the persons likely to have seen or heard from the missing person (naming them and their relationship to the missing person) and that the whereabouts of the missing person is unknown to those persons and to the petitioner.

(4) A description of the search or the inquiry made concerning the whereabouts of the missing person.

12405. Notice of hearing shall be served and published, and proof made, in the same manner as in proceedings for administration of the estate of a decedent, except that notice of hearing on the petition shall also be sent by registered mail to the missing person at his or her last known address.

12406. (a) At the hearing, the court shall determine whether the alleged missing person is a person who is presumed to be dead under Section 12401. The court may receive evidence and consider the affidavits and depositions of persons likely to have seen or heard from or know the whereabouts of the alleged missing person.

(b) If the court is not satisfied that a diligent search or inquiry has been made for the missing person, the court may order the petitioner to conduct a diligent search or inquiry and to report the results. The court may order the search or inquiry to be made in any manner that the court determines to be advisable, including any or all of the following methods:

(1) Inserting in one or more suitable newspapers or other periodicals a notice requesting information from any person having knowledge of the whereabouts of the missing person.

(2) Notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the missing person.

(3) Engaging the services of an investigator.

(c) The costs of a search ordered by the court pursuant to subdivision (b) shall be paid by the estate of the missing person, but if there is no administration, the court in its discretion may order the petitioner to pay the costs.

12407. (a) If the court finds that the alleged missing person is a person presumed to be dead under Section 12401, the court shall do both of the following:

(1) Appoint a personal representative for the estate of the missing person in the manner provided for the estates of deceased persons.

(2) Determine the date of the missing person's death.

(b) The personal representative shall administer the estate of the missing person in the same general manner and method of procedure, and with the same force and effect, as provided for the administration of the estates of deceased persons, except as otherwise provided in this part.

12408. (a) If the missing person reappears:

(1) The missing person may recover property of the missing person's estate in the possession of the personal representative, less fees, costs, and expenses thus far incurred.

(2) The missing person may recover from distributees any property of the missing person's estate that is in their possession, or the value of distributions received by them, to the extent that recovery from distributees is equitable in view of all the circumstances, but an action under this paragraph is forever barred five years after the time the distribution was made.

(b) The remedies available to the missing person under

subdivision (a) are exclusive, except for any remedy the missing person may have by reason of fraud or intentional wrongdoing.

(c) Except as provided in subdivisions (a) and (b), the order for final distribution, when it becomes final, is conclusive as to the rights of the missing person, the rights of the beneficiaries of the missing person, and the rights of all other persons interested in the estate.

(d) If a dispute arises as to the identity of a person claiming to be a reappearing missing person, the person making the claim or any other interested person may file a petition under Section 1080, notwithstanding the limitations of time prescribed in Section 1080, for the determination of the identity of the person claiming to be the reappearing missing person.

12409. (a) This part applies only to cases where a petition is filed under Section 12404, or under former Section 1354, after December 31, 1983. If a petition is filed under Section 12404, or under former Section 1354, the required period of absence of the alleged missing person may include a period of absence that commenced to run before the operative date of the applicable section.

(b) This part does not apply to any proceeding under former Sections 280 to 294, inclusive, that was pending on December 31, 1983, and the law that applied to that proceeding on December 31, 1983, continues to apply after that date.

SEC. 94. Section 13101 of the Probate Code is amended to read:

13101. (a) To collect money, receive tangible personal property, or have evidences of a debt, obligation, interest, right, security, or chose in action transferred under this chapter, an affidavit or a declaration under penalty of perjury under the laws of this state shall be furnished to the holder of the decedent's property stating all of the following:

(1) The decedent's name.

(2) The date and place of the decedent's death.

(3) "At least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the decedent's death certificate attached to this affidavit or declaration."

(4) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."

(5) "The gross value of the decedent's real and personal property in California, excluding the property described in Section 13050 of the California Probate Code, does not exceed sixty thousand dollars ($60,000)."

(6) A description of the property of the decedent that is to be paid, transferred, or delivered to the affiant or declarant.

(7) The name of the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the described property.

(8) Either of the following, as appropriate:

(A) "The affiant or declarant is the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the decedent's interest in the described property."

(B) "The affiant or declarant is authorized under Section 13051 of the California Probate Code to act on behalf of the successor of the decedent (as defined in Section 13006 of the California Probate Code) with respect to the decedent's interest in the described property."

(9) "No other person has a right to the interest of the decedent in the described property."

(10) "The affiant or declarant requests that the described property be paid, delivered, or transferred to the affiant or declarant."

(11) "The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

(b) Where more than one person executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact.

(c) A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration.

SEC. 94.1. Section 13114 of the Probate Code is amended to read:

13114. (a) A public administrator who has taken charge of the estate of a decedent as provided in Section 1140 may refuse to pay money or deliver property pursuant to this chapter if payment of the costs and fees described in Section 1144.5, subject to the dollar limitations specified in that section, has not first been made or adequately assured to the satisfaction of the public administrator.

(b) A coroner who has property found upon the body of a decedent, or who has taken charge of property of the decedent pursuant to Section 27491.3 of the Government Code, may refuse to pay or deliver the property pursuant to this chapter if payment of the reasonable costs of holding or safeguarding the property has not first been made or adequately assured to the satisfaction of the coroner.

SEC. 94.3. Section 13116 is added to the Probate Code, to read:

13116. The procedure provided in this chapter is in addition to and supplemental to any other procedure for (1) collecting money due to a decedent, (2) receiving tangible personal property of a decedent, or (3) having evidence of ownership of property of a decedent transferred. Nothing in this chapter restricts or limits the release of tangible personal property of a decedent pursuant to any other provision of law. This section is declaratory of existing law.

SEC. 94.5. Section 13152 of the Probate Code is amended to read:

13152. (a) The petition shall be verified by each petitioner, shall contain a request that the court make an order under this chapter determining that the particular item of property described in the petition is property passing to the petitioner and that no administration of the decedent's estate is necessary, and shall state all of the following:

(1) The facts necessary to determine that the petition is filed in the proper county.

(2) The gross value of the decedent's real and personal property

in California, excluding the property described in Section 13050, as shown by the inventory and appraisement attached to the petition, does not exceed sixty thousand dollars ($60,000).

(3) A description of the particular item of property in this state which the petitioner alleges is property of the decedent passing to the petitioner.

(4) The facts upon which the petitioner bases the allegation that the described real property is property passing to the petitioner.

(5) A statement that no proceeding is being or has been conducted in this state for administration of the decedent's estate.

(6) Whether estate proceedings for the decedent have been commenced in any other jurisdiction and, if so, where those proceedings are pending or were conducted.

(7) The names, addresses, relationships, and ages of the heirs and devisees of the decedent, the names and addresses of all persons named as executors of the will of the decedent, and, if the personal representative is the trustee of a trust that is a devisee under the will of the decedent, the names and addresses of all persons interested in the trust, as determined in cases of future interests pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 15804, so far as known to any petitioner.

(b) There shall be attached to the petition an inventory and appraisement in the form set forth in Section 600 of the decedent's real and personal property in this state, excluding the property described in Section 13050. The inventory and appraisement shall be made by a probate referee selected by the petitioner from those probate referees appointed by the Controller under Section 1305 to appraise property in the county where the real property is located. The appraisement shall be made as set forth in Chapter 9 (commencing with Section 600) of Division 3. The petitioner may appraise the assets which a personal representative could appraise under paragraph (1) of subdivision (a) of Section 605.

(c) If the petitioner bases his or her claim to the described particular item of property upon the will of the decedent, a copy of the will shall be attached to the petition.

SEC. 95. Section 13153 of the Probate Code is amended to read:

13153. Notice of the hearing shall be given as provided in Section 1220 to each of the persons named in the petition pursuant to Section 13152.

SEC. 96. Section 13501 of the Probate Code is amended to read:

13501. Except as provided in Chapter 6 (commencing with Section 6600) of Division 6 and in Part 1 (commencing with Section 13000) of this division, the following property of the decedent is subject to administration under Division 3 (commencing with Section 300):

(a) Property passing to someone other than the surviving spouse under the decedent's will or by intestate succession.

(b) Property disposed of in trust under the decedent's will.

(c) Property in which the decedent's will limits the surviving

spouse to a qualified ownership. For the purpose of this subdivision, a devise to the surviving spouse that is conditioned on the spouse surviving the decedent by a specified period of time is not a "qualified ownership" interest if the specified period of time has expired.

SEC. 97. Section 13552 of the Probate Code is amended to read:

13552. If proceedings are commenced in this state for the administration of the estate of the deceased spouse and the time for filing claims has commenced, any action upon the liability of the surviving spouse pursuant to Section 13550 is barred to the same extent as provided for claims under Part 4 (commencing with Section 9000) of Division 7, except as to the following:

(a) Creditors who commence judicial proceedings for the enforcement of the debt and serve the surviving spouse with the complaint therein prior to the expiration of the time for filing claims.

(b) Creditors who have or who secure the surviving spouse's acknowledgment in writing of the liability of the surviving spouse for the debts.

(c) Creditors who file a timely claim in the proceedings for the administration of the estate of the deceased spouse.

SEC. 98. Section 13655 of the Probate Code is amended to read:

13655. (a) If a petition filed under this chapter is filed with a petition for probate of the deceased spouse's will, notice of the hearing on the petition shall be given in the manner prescribed by Sections 327 and 328 and shall be included in the notice required by those sections. If the petition filed under this chapter is filed with a petition for administration of the estate of the deceased spouse, notice of the hearing on the petition shall be given in the manner prescribed by Section 441 and shall be included in the notice required by that section.

(b) If proceedings for the administration of the estate of the deceased spouse are pending at the time a petition is filed under this chapter or, if the proceedings are not pending and if the petition filed under this chapter is not filed with a petition for probate of the deceased spouse's will or for administration of the estate of the deceased spouse, the clerk shall set the petition for hearing. At least 15 days before the hearing, notice of the hearing on the petition filed under this chapter shall be personally served upon the following persons by the petitioner or mailed, postage prepaid, by the petitioner to the following persons, addressed to the addresses given in their request for special notice or notice of appearance, the addresses of their offices or places of residence, or, if neither of these addresses is known to the petitioner, the county seat of the county in which the proceedings are pending:

(1) Any personal representative who is not the petitioner.

(2) All devisees and known heirs of the deceased spouse and, if the personal representative is the trustee of a trust that is a devisee under the will of the decedent, all persons interested in the trust, as determined in cases of future interests pursuant to paragraph (1),

(2), or (3) of subdivision (a) of Section 15804.

(3) All persons or their attorneys who have requested special notice pursuant to Section 1250.

(4) All persons or their attorneys who have given notice of appearance.

(c) The notice specified in subdivision (b) shall also be mailed as provided in subdivision (b) to the Attorney General, addressed to the office of the Attorney General at Sacramento, California, if the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will of the deceased spouse and the will involves or may involve either of the following:

(1) A testamentary trust of property for charitable purposes other than a charitable trust with a designated trustee, resident in this state.

(2) A devise for a charitable purpose without an identified devisee or beneficiary.

SEC. 99. Section 15005 of the Probate Code is repealed.

SEC. 100. Section 16304 of the Probate Code is amended to read:

16304. (a) An income beneficiary is entitled to income from the date specified in the trust instrument or, if none is specified, from the date an item of property becomes subject to the trust. In the case of an item of property becoming subject to a trust by reason of a person's death, it becomes subject to the trust as of the date of the death of the person even though there is an intervening period of administration of the person's estate.

(b) Upon property becoming subject to a trust by reason of a person's death:

(1) Receipts due but not paid at the date of death of the person are principal.

(2) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due at the date of the death of the person shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal and the balance is income.

(c) In all other cases, any receipt from income-producing property is income even though the receipt was earned or accrued in whole or in part before the date when the property became subject to the trust.

(d) If an income beneficiary's right to income ceases by death or in any other manner, all payments actually paid to the income beneficiary or in the hands of the trustee for payment to the income beneficiary before such termination belong to the income beneficiary or to his or her personal representative. All income actually received by the trustee after such termination shall be paid to the person next entitled to income by the terms of the trust. This subdivision is subject to subdivision (d) of Section 21524 and does not apply to income received by a trustee under subdivision (b) of

Section 16305.

(e) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

SEC. 100.5. Section 20114.5 of the Probate Code, as added by Chapter 128 of the Statutes of 1987, is amended to read:

20114.5. (a) As used in this section:

(1) A reference to Section 4981 of the Internal Revenue Code means Section 4981 as enacted by Section 1133(a) of the Tax Reform Act of 1986 (Public Law 99-514) or as subsequently amended.

(2) "Excess retirement accumulation" has the meaning given it in Section 4981(d)(3) of the Internal Revenue Code.

(b) If the federal estate tax is increased under Section 4981(d) of the Internal Revenue Code, the amount of the increase shall be a charge against the persons who receive the excess retirement accumulation that gives rise to the increase, and shall be equitably prorated among all persons who receive interests in qualified employer plans and individual retirement plans to which the excess retirement accumulation is attributable.

SEC. 101. Division 11 (commencing with Section 21100) is added to the Probate Code, to read:

DIVISION 11. CONSTRUCTION OF WILLS, TRUSTS, AND OTHER INSTRUMENTS

PART 1. GENERAL PROVISIONS

CHAPTER 1. SCOPE AND DEFINITIONS

21100. Unless the provision or context otherwise requires, as used in this division:

(a) "Fiduciary" means personal representative, trustee, guardian, conservator, or other legal representative.

(b) "Instrument" means a will, trust, deed, or other writing that designates a beneficiary or makes a donative transfer of property.

(c) "Transferor" means the testator, settlor, grantor, owner, or other person who executes an instrument.

21101. Unless the provision or context otherwise requires, this division applies to a will, trust, deed, and any other instrument.

CHAPTER 2. MISCELLANEOUS PROVISIONS

21120. (a) If an instrument authorizes a fiduciary to satisfy a pecuniary gift wholly or partly by distribution of property other than money, property selected for that purpose shall be valued at its fair market value on the date of distribution, unless the instrument expressly provides otherwise. If the instrument permits the fiduciary to value property selected for distribution as of a date other than the

date of distribution, then, unless the instrument expressly provides otherwise, the property selected by the fiduciary for that purpose shall have an aggregate fair market value on the date or dates of distribution which, when added to any cash distributed, will amount to no less than the amount of the pecuniary gift as stated in, or determined by, the instrument.

(b) As used in this section, "pecuniary gift" means a transfer of property made in an instrument that either is expressly stated as a fixed dollar amount or is a dollar amount determinable by the provisions of the instrument.

PART 5. COMPLIANCE WITH INTERNAL REVENUE CODE

CHAPTER 1. GENERAL PROVISIONS

21500. As used in this part, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time. A reference to a provision of the Internal Revenue Code includes any subsequent provision of law enacted in its place.

21501. (a) This part applies to a distribution made on or after January 1, 1988, whether the transferor died before, on, or after that date.

(b) A distribution made on or after January 1, 1983, and before January 1, 1988, is governed by the applicable law in effect before January 1, 1988.

21502. (a) This part does not apply to an instrument the terms of which expressly or by necessary implication make this part inapplicable.

(b) By an appropriate statement made in an instrument, the transferor may incorporate by reference any or all of the provisions of this part. The effect of incorporating a provision of this part in an instrument is to make the incorporated provision a part of the instrument as though the language of the incorporated provision were set forth verbatim in the instrument. Unless an instrument incorporating a provision of this part provides otherwise, the instrument automatically incorporates the provision's amendments.

21503. (a) If an instrument includes a formula intended to eliminate the federal estate tax, the formula shall be applied to eliminate or to reduce to the maximum extent possible the federal estate tax.

(b) If an instrument includes a formula that refers to a maximum fraction or amount that will not result in a federal estate tax, the formula shall be construed to refer to the maximum fraction or amount that will not result in or increase the federal estate tax.

CHAPTER 2. MARITAL DEDUCTION GIFTS

21520. As used in this chapter:

(a) "Marital deduction" means the federal estate tax deduction

allowed for transfers under Section 2056 of the Internal Revenue Code or the federal gift deduction allowed for transfers under Section 2523 of the Internal Revenue Code.

(b) "Marital deduction gift" means a transfer of property that is intended to qualify for the marital deduction.

21521. This chapter does not apply to a trust that qualifies for the marital deduction under Section 20.2056(e)-2(b) of the Code of Federal Regulations (commonly referred to as the "estate trust").

21522. If an instrument contains a marital deduction gift:

(a) The provisions of the instrument, including any power, duty, or discretionary authority given to a fiduciary, shall be construed to comply with the marital deduction provisions of the Internal Revenue Code.

(b) The fiduciary shall not take any action or have any power that impairs the deduction as applied to the marital deduction gift.

(c) The marital deduction gift may be satisfied only with property that qualifies for the marital deduction.

21523. (a) The Economic Recovery Act of 1981 was enacted August 13, 1981. This section applies to an instrument executed before September 12, 1981 (before 30 days after enactment of the Economic Recovery Tax Act of 1981).

(b) If an instrument described in subdivision (a) indicates the transferor's intention to make a gift that will provide the maximum allowable marital deduction, the instrument passes to the recipient an amount equal to the maximum amount of the marital deduction that would have been allowed as of the date of the gift under federal law as it existed before enactment of the Economic Recovery Tax Act of 1981, with adjustments for the following, if applicable:

(1) The provisions of Section 2056(c)(1)(B) and (C) of the Internal Revenue Code in effect immediately before enactment of the Economic Recovery Tax Act of 1981.

(2) To reduce the amount passing under the gift by the final federal estate tax values of any other property that passes under or outside of the instrument and qualifies for the marital deduction. This subdivision does not apply to qualified terminable interest property under Section 2056(b)(7) of the Internal Revenue Code.

21524. If a marital deduction gift is made in trust, in addition to the other provisions of this chapter, each of the following provisions also applies to the marital deduction trust:

(a) The transferor's spouse is the only beneficiary of income or principal of the marital deduction property as long as the spouse is alive. Nothing in this subdivision precludes exercise by the transferor's spouse of a power of appointment included in a trust that qualifies as a general power of appointment marital deduction trust.

(b) Subject to subdivision (d), the transferor's spouse is entitled to all of the income of the marital deduction property not less frequently than annually, as long as the spouse is alive.

(c) The transferor's spouse has the right to require that the trustee of the trust make unproductive marital deduction property

productive or to convert it into productive property within a reasonable time.

(d) Notwithstanding subdivision (d) of Section 16304, in the case of qualified terminable interest property under Section 2056(b)(7) or Section 2523(f) of the Internal Revenue Code, on termination of the interest of the transferor's spouse in the trust all of the remaining accrued or undistributed income shall pass to the estate of the transferor's spouse, unless the instrument provides a different disposition that qualifies for the marital deduction.

21525. (a) If an instrument that makes a marital deduction gift includes a condition that the transferor's spouse survive the transferor by a period that exceeds six months, other than a condition described in subdivision (b), the condition shall be limited to six months as applied to the marital deduction gift.

(b) If an instrument that makes a marital deduction gift includes a condition that the transferor's spouse survive a common disaster that results in the death of the transferor, the condition shall be limited to the time of the final audit of the federal estate tax return for the transferor's estate, if any, as applied to the marital deduction gift.

21526. A fiduciary is not liable for a good faith decision to make any election, or not to make any election, referred to in Section 2056(b)(7) or Section 2523(f) of the Internal Revenue Code.

CHAPTER 3. CHARITABLE GIFTS

21540. If an instrument indicates the transferor's intention to comply with the Internal Revenue Code requirements for a charitable remainder unitrust or a charitable remainder annuity trust as each is defined in Section 664 of the Internal Revenue Code, the provisions of the instrument, including any power, duty, or discretionary authority given to a fiduciary, shall be construed to comply with the charitable deduction provisions of Section 2055 or Section 2522 of the Internal Revenue Code and the charitable remainder trust provisions of Section 664 of the Internal Revenue Code in order to conform to that intent. In no event shall the fiduciary take an action or have a power that impairs the charitable deduction. The provisions of the instrument may be augmented in any manner consistent with Section 2055(e) or Section 2522(c) of the Internal Revenue Code on a petition provided for in Section 17200.

21541. If an instrument indicates the transferor's intention to comply with the requirements for a charitable lead trust as described in Section 170(f)(2)(B) and Section 2055(e)(2) or Section 2522(c)(2) of the Internal Revenue Code, the provisions of the instrument, including any power, duty, or discretionary authority given to a fiduciary, shall be construed to comply with the provisions of that section in order to conform to that intent. In no event shall the fiduciary take any action or have any power that impairs the charitable deduction. The provisions of the instrument may be

augmented in any manner consistent with that intent upon a petition provided for in Section 17200.

SEC. 102. Section 19265 of the Revenue and Taxation Code is amended to read:

19265. (a) Every fiduciary who pays in whole or in part any claim, other than claims for taxes, expenses of administration, funeral expenses, expenses of last illness, family allowance, or wage claims as defined in Section 11402 of the Probate Code, against the person, estate, or trust for whom or for which the fiduciary acts, or who makes any distribution of the assets of the person, estate, or trust, before satisfaction and payment of taxes, interest, and penalties, except penalties due from a decedent, which are imposed by this part on the person, estate, or trust for whom or for which the fiduciary acts, or which constitute a claim against the person, estate, or trust, or which are a lien or charge on or against the assets of the person, estate, or trust, is personally liable to the state for the taxes, interest, and penalties to the extent of the payments and distributions.

(b) The amendments made to this section by Assembly Bill 708 of the 1987–88 Regular Session do not apply in any proceeding commenced before July 1, 1988.

SEC. 103. (a) Except as otherwise provided in this act, Sections 1 to 102, inclusive, of this act shall become operative on July 1, 1988.

(b) The following sections of this act shall become operative on January 1, 1988:

(1) Section 1.2 (amending Section 5230 of the Corporations Code).

(2) Section 1.3 (amending Section 7230 of the Corporations Code).

(3) Section 1.4 (amending Section 9240 of the Corporations Code).

(4) Section 3 (amending Section 2 of the Probate Code).

(5) Section 4 (amending Section 8 of the Probate Code).

(6) Section 5 (amending the heading of Part 2 (commencing with Section 20) of Division 1 of the Probate Code).

(7) Section 6 (amending Section 20 of the Probate Code).

(8) Section 7 (amending Section 21 of the Probate Code).

(9) Sections 8 and 9 (repealing and adding Section 22 of the Probate Code).

(10) Section 10 (adding Section 23 to the Probate Code).

(11) Section 11 (amending Section 24 of the Probate Code).

(12) Section 12 (amending Section 26 of the Probate Code).

(13) Section 13 (adding Section 46 to the Probate Code).

(14) Section 14 (adding Section 52 to the Probate Code).

(15) Section 15 (amending Section 54 of the Probate Code).

(16) Sections 16 and 17 (repealing and adding Section 58 of the Probate Code).

(17) Section 18 (amending Section 62 of the Probate Code).

(18) Section 19 (amending Section 141 of the Probate Code).

(19) Section 25 (amending Section 282 of the Probate Code).
(20) Section 26 (amending Section 300 of the Probate Code).
(21) Section 31 (amending Section 422 of the Probate Code).
(22) Section 54.5 (repealing Article 3 (commencing with Section 1030) of Chapter 16 of Division 3 of the Probate Code).
(23) Section 66.5 (amending Section 2100 of the Probate Code).
(24) Section 81 (amending Section 2580 of the Probate Code).
(25) Section 85.3 (amending Section 6246 of the Probate Code).
(26) Section 85.7 (amending Section 6247 of the Probate Code).
(27) Section 94 (amending Section 13101 of the Probate Code).
(28) Section 94.1 (amending Section 13114 of the Probate Code).
(29) Section 94.3 (adding Section 13116 to the Probate Code).
(30) Section 94.5 (amending Section 13152 of the Probate Code).
(31) Section 96 (amending Section 13501 of the Probate Code).
(32) Section 99 (repealing Section 15005 of the Probate Code).
(33) Section 100 (amending Section 16304 of the Probate Code).
(34) Section 100.5 (amending Section 20114.5 of the Probate Code).
(35) Section 101 (adding Division 11 (commencing with Section 21100) to the Probate Code).

(c) On and after January 1, 1988, the Judicial Council may adopt any necessary forms so that the forms may be used when this act becomes operative.

(d) On and after January 1, 1988, the courts may adopt any necessary rules so that the rules will be effective when this act becomes operative.

SEC. 104. Section 22.5 of this bill, which adds Section 216 to the Probate Code, incorporates the provisions of Section 700.2 of the Probate Code, as added by Assembly Bill 2248. Section 22.5 shall only become operative if (1) both bills are enacted and become effective January 1, 1988, (2) Assembly Bill 2248 adds Section 700.2 to the Probate Code, and (3) this bill is enacted after Assembly Bill 2248.

CHAPTER 924

An act to amend Sections 11470, 11473.3, 11488, 11488.4, 11488.5, and 11489 of, and to add Sections 11471.5, 11488.4, and 11488.5 to, the Health and Safety Code, relating to controlled substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 11470 of the Health and Safety Code, as amended by Section 25.5 of Chapter 1044 of the Statutes of 1986, 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 except real property or a boat, airplane, or any vehicle 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, which has been used as an instrument to facilitate the possession for sale or sale of 14.25 grams or more of heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or a substance containing 14.25 grams or more of heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or 14.25 grams or more of a substance containing heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or 28.5 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 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or a substance containing 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or 57 grams or more of a substance containing cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or 28.5 grams or more of Schedule II controlled substances. No interest in a vehicle which may be lawfully driven on the highway with a class 3 or class 4 license, as prescribed in Section 12804 of the Vehicle Code, 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 sole class 3 or class 4 vehicle available to the defendant's immediate family.

(f) 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 , all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 of this code, or Section 182 of the Penal Code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five

years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first.

(g) The real property of any property owner who is convicted of violating Section 11366, 11366.5, or 11366.6 with respect to that property. However, property which is used as a family residence or for other lawful purposes, or which is owned by two or more persons, one of whom had no knowledge of its unlawful use, shall not be subject to forfeiture.

(h) Subject to Section 1538.5 of the Penal Code and compliance with the requirements of Section 11488.5 and except as further limited by this subdivision to protect innocent parties who claim a property interest acquired from a defendant, all right, title, and interest in any personal property described in this section shall vest in the state upon commission of the act giving rise to forfeiture under this chapter, if the state or local governmental entity proves a violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 in accordance with the burden of proof set forth in paragraph (1) of subdivision (i) of Section 11488.4 or, in the case of cash or negotiable instruments in excess of twenty-five thousand dollars ($25,000), paragraph (4) of subdivision (i) of Section 11488.4.

The operation of the special vesting rule established by this subdivision shall be limited to circumstances where its application will not defeat the claim of any person, including a bona fide purchaser or encumbrancer who, pursuant to Section 11488.5, 11488.6, or 11489, claims an interest in the property seized, notwithstanding that the interest in the property being claimed was acquired from a defendant whose property interest would otherwise have been subject to divestment pursuant to this subdivision.

(i) Except as otherwise provided in this subdivision, or in cases which proceed under subdivision (j) of Section 11488.4, upon seizure by any peace officer of this state, all moneys, negotiable instruments, or other cash equivalents seized in accordance with Section 11488, shall, immediately upon being seized, come under the jurisdiction of the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or the superior court of the county in which the property subject to forfeiture has been seized. These moneys, negotiable instruments, or other cash equivalents shall be handled in accordance with subdivision (b) of Section 11488.

This subdivision applies only to the Los Angeles Police Department and the Los Angeles Sheriff's Department and does not apply (1) when the property seized exceeds a value of fifty thousand dollars ($50,000), (2) in any case where the seizure was made in the course of a criminal investigation in which federal law enforcement agents participated, or (3) in any case in which the underlying or related criminal action or proceeding is brought in federal court.

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 enacted before January 1, 1989, deletes or extends that date.

SEC. 1.5. Section 11471.5 is added to the Health and Safety Code, to read:

11471.5. A peace officer making a seizure pursuant to Section 11471 shall notify the Franchise Tax Board where there is reasonable cause to believe that the value of the seized property exceeds five thousand dollars ($5,000).

SEC. 2. Section 11473.3 of the Health and Safety Code is amended to read:

11473.3. (a) When authorized by a final judgment of forfeiture or by a declaration of forfeiture issued pursuant to subdivision (j) of Section 11488.4, items of property seized or subject to forfeiture, but not seized, pursuant to subdivision (b), (c), or (d) of Section 11470 may be utilized by the law enforcement agency in its law enforcement program.

(b) A certified copy of the judgment of forfeiture issued by the court or a declaration of forfeiture issued pursuant to subdivision (j) of Section 11488.4 as a result of the forfeiture proceedings shall serve to vest title to any property specified in subdivision (a) in the named law enforcement agency.

(c) The same authority with respect to transfer or sale of property as is specified in Section 11473.2 shall apply to property subject to this section.

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 enacted before January 1, 1989, deletes or extends that date.

SEC. 3. Section 11488 of the Health and Safety Code, as amended by Section 26.5 of Chapter 1044 of the Statutes of 1986, is amended to read:

11488. (a) Any peace officer of this state, subsequent to making or attempting to make an arrest for a violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 of this code, or Section 182 of the Penal Code insofar as the offense involves manufacture, sale, purchase for the purpose of sale, possession for sale or offer to manufacture or sell, or conspiracy to commit one of those offenses, may seize any item subject to forfeiture under subdivisions (a) to (f), inclusive, of Section 11470.

The peace officer shall also notify the Franchise Tax Board of a seizure where there is reasonable cause to believe that the value of the seized property exceeds five thousand dollars ($5,000).

(b) Except as provided in this subdivision, the peace officer shall immediately turn over all moneys, negotiable instruments, or other cash equivalents to the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or the superior court of the county in which the property subject to forfeiture has been seized or to the Attorney General or district attorney to hold for that court. Except for property subject

to forfeiture pursuant to subdivision (j) of Section 11488.4, these moneys, negotiable instruments, or other cash equivalents shall not be transferred to any other agency, local, state, or federal, except upon court order. The peace officer shall also notify the Franchise Tax Board of a seizure where there is reasonable cause to believe that the value of the seized property exceeds five thousand dollars ($5,000).

This subdivision applies only to the Los Angeles Police Department and the Los Angeles Sheriff's Department and does not apply (1) when the property seized exceeds a value of fifty thousand dollars ($50,000), (2) in any case where the seizure was made in the course of a criminal investigation in which federal law enforcement agents participated, or (3) in any case in which the underlying or related criminal action or proceeding is brought in the federal court.

(c) 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.

(d) 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.

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 enacted before January 1, 1989, deletes or extends that date.

SEC. 4. Section 11488.4 of the Health and Safety Code, as amended by Section 8 of Chapter 1032 of the Statutes of 1986, is amended to read:

11488.4. (a) Except as provided in subdivision (j), 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 or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located.

A petition of forfeiture under this subdivision shall be filed within one year of the seizure of the property which is subject to forfeiture, or within one year of the filing by the Attorney General or district

attorney of a lis pendens or other process against the property, whichever is earlier.

(b) Physical seizure of assets shall not be necessary in order to have that particular asset alleged to be forfeitable in a petition under this section. The prosecuting attorney may seek protective orders for any asset pursuant to Section 11492.

(c) 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, if any, 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 or if the property was not seized, a notice of the initiation of forfeiture proceedings with respect to any interest in the property seized or subject to forfeiture, to be served by personal delivery or by registered mail upon any person who has an interest in the seized property or property subject to forfeiture other than persons designated in a receipt issued for the property seized.

(d) An investigation shall be made by the law enforcement agency as to any claimant to a vehicle, boat, or airplane whose right, title, interest, or lien is of record in the Department of Motor Vehicles or appropriate federal agency. If the law enforcement agency finds that any person, other than the registered owner, is the legal owner thereof, and such ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, boat, or airplane, it shall forthwith send a notice to the legal owner at his or her address appearing on the records of the Department of Motor Vehicles or appropriate federal agency.

(e) When a forfeiture action is filed, the notices shall be published once a week for three successive weeks in a newspaper of general circulation in the county where the seizure was made or where the property subject to forfeiture is located.

(f) All notices shall set forth the time within which a claim of interest in the property seized or subject to forfeiture is required to be filed pursuant to Section 11488.5.

(g) Nothing contained in this chapter shall preclude a person, other than a defendant, claiming an interest in property actually seized from moving for a return of property pursuant to Section 1538.5, 1539, or 1540 of the Penal Code if that person can show standing by proving an interest in the property not assigned subsequent to the seizure or filing of the forfeiture petition.

(h) If there is an underlying or related criminal action, a defendant may move, exclusively pursuant to Section 1538.5 of the Penal Code, for the return of the property on the grounds that there is not probable cause to believe that the property is forfeitable pursuant to subdivisions (a) to (g), inclusive, of Section 11470 and is not automatically made forfeitable or subject to court order of

forfeiture or destruction by another provision of this chapter. The motion may be made at the preliminary examination or subsequent thereto. If made subsequent to the preliminary examination, the Attorney General or district attorney may submit the record of the preliminary hearing to establish that probable cause exists to believe that the underlying or related 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.

(i) (1) With respect to property described in subdivisions (e) and (g) of Section 11470 for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought was used, or intended to be used, to facilitate a violation of one of the offenses enumerated in subdivision (f) or (g) of Section 11470.

(2) In the case of property described in subdivision (f) of Section 11470, except cash, negotiable instruments, or other cash equivalents of a value of not less than twenty-five thousand dollars ($25,000), for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought meets the criteria for forfeiture described in subdivision (f) of Section 11470.

(3) In the case of property described in paragraphs (1) or (2), a judgment of forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all parties.

(4) In the case of property described in subdivision (f) of Section 11470 that is cash or negotiable instruments of a value of not less than twenty-five thousand dollars ($25,000), the state or local governmental entity shall have the burden of proving by clear and convincing evidence that the property for which forfeiture is sought is such as is described in subdivision (f) of Section 11470. There is no requirement for forfeiture thereof that a criminal conviction be obtained in an underlying or related criminal offense.

(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial.

(j) The Attorney General or the district attorney of the county in which property is subject to forfeiture under Section 11470 may, pursuant to this subdivision, order forfeiture of personal property not exceeding twenty-five thousand dollars ($25,000) in value. The Attorney General or district attorney shall provide notice of proceedings under this subdivision pursuant to subdivisions (c), (d), (e), and (f), including:

(1) A description of the property.

(2) The appraised value of the property.

(3) The date and place of seizure or location of any property not seized but subject to forfeiture.

(4) The violation of law alleged with respect to forfeiture of the property.

(5) The instructions for filing a claim with the Attorney General or the district attorney pursuant to Section 11488.5 and time limits for filing a claim. If no claims are timely filed, the Attorney General or the district attorney shall prepare a written declaration of forfeiture of the subject property to the state and dispose of the property in accordance with Section 11489. A written declaration of forfeiture signed by the Attorney General or district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited property.

The prosecuting agency ordering forfeiture pursuant to this subdivision shall provide a copy of the declaration of forfeiture to any person listed in the receipt given at the time of seizure and to any person personally served notice of the forfeiture proceedings.

If a claim is timely filed, then the Attorney General or district attorney shall file a petition of forfeiture pursuant to this section within 30 days of the receipt of the claim. The petition of forfeiture shall then proceed pursuant to other provisions of this chapter, except that no additional notice need be given and no additional claim need be filed.

(k) If in any underlying or related criminal action or proceeding, in which a petition for forfeiture has been filed pursuant to this section, and a criminal conviction is required before a judgment of forfeiture may be entered, the defendant willfully fails to appear as required there shall be no requirement of a criminal conviction as a prerequisite to forfeiture. In these cases, forfeiture shall be ordered as against the defendant and judgment entered upon default, upon application of the state or local governmental entity. In its application for default, the state or local governmental entity shall be required to give notice to the defendant's attorney of record, if any, in the underlying or related criminal action, and to make a showing of due diligence to locate the defendant. In moving for a default judgment pursuant to this subdivision, the state or local governmental entity shall be required to establish a prima facie case in support of its petition for forfeiture.

(*l*) 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 enacted before January 1, 1989, deletes or extends that date.

SEC. 5. 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 warrant that the moneys, negotiable instruments, securities, or other things of value seized come within the provisions of subdivision (e), (f), or (g) 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 defendant has been charged with the underlying criminal offense.

(b) The prosecuting attorney shall cause to be recorded a lis pendens on any real property alleged to be forfeitable in the petition in the county in which the property is located.

(c) Physical seizure of assets shall not be necessary in order to have that particular asset alleged to be forfeitable in a petition under this section. The prosecuting attorney may seek protective orders for any asset pursuant to Section 11492.

(d) 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.

(e) An investigation shall be made by the law enforcement agency as to any claimant to a vehicle, boat, or airplane whose right, title, interest, or lien is of record in the Department of Motor Vehicles or appropriate federal agency. If the law enforcement agency finds that any person, other than the registered owner, is the legal owner thereof, and such ownership 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 or her address appearing on the records of the Department of Motor Vehicles or appropriate federal agency.

(f) When a forfeiture action is filed, the notices shall be published once a week for three successive weeks in a newspaper of general circulation in the county where the seizure was made.

(g) 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.

(h) 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.

(i) A defendant may move for the return of the property on the

grounds that there is no probable cause to believe that the property is forfeitable pursuant to subdivision (e), (f), or (g) of Section 11470. The motion may be made at the preliminary examination or subsequent to the preliminary examination. 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.

(j) If the defendant is found guilty of the underlying criminal offense, the issue of forfeiture shall be tried before the same jury, if trial was by jury, or tried before the same court, if trial was by the court, unless waived by all parties. At the hearing, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the assets in question are subject to forfeiture pursuant to Section 11470.

(k) This section shall become operative on January 1, 1989.

SEC. 6. Section 11488.5 of the Health and Safety Code, as amended by Section 9 of Chapter 1032 of the Statutes of 1986, is amended to read:

11488.5. (a) (1) 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, if that person was not personally served or served by mail, or within 10 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in which the property is located, a verified claim stating his or her interest in the property. A verified copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate.

(2) Any person who claims that the property was assigned to him or to her prior to the seizure or notification of pending forfeiture of the property under this chapter, whichever occurs first, shall file a claim with the court and prosecuting agency pursuant to Section 11488.5 declaring an interest in that property and such interest shall be adjudicated at the forfeiture hearing. The property shall remain under control of the law enforcement or prosecutorial agency until the adjudication of the forfeiture hearing.

(3) The claim of a law enforcement agency to property seized pursuant to Section 11488 or subject to forfeiture shall have priority over a claim to the seized or forfeitable property made by the Franchise Tax Board in a notice to withhold issued pursuant to Section 18817 or 26132 of the Revenue and Taxation Code.

(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 or subject to forfeiture pursuant to subdivisions (a) to (g),

inclusive, of Section 11470 forfeited to the state. In moving for a default judgment pursuant to this subdivision, the state or local governmental entity shall be required to establish a prima facie case in support of its petition for forfeiture.

(2) The clerk of the court shall dispose of the forfeited property as set forth in Section 11489.

(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 a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related 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, pursuant to subdivision (i) of Section 11488.4, 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, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4.

(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. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4.

(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have 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 the 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 a contested forfeiture hearing and which was not released by the court to a claimant shall be declared by the court to be forfeited to the state, provided the burden of proof required pursuant to subdivision (i) of Section 11488.4 has been met. Except as provided in Sections 11473.2 and 11473.3, the clerk of the court shall dispose of the forfeited property as set forth in Section 11489.

(g) All seized property which was the subject of the forfeiture hearing and which was not forfeited shall remain subject to any order to withhold issued with respect to the property by the Franchise Tax Board.

(h) 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 enacted before January 1, 1989, deletes or extends that date.

SEC. 7. Section 11488.5 is added to the Health and Safety Code, to read:

11488.5. (a) (1) 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 defendant has been charged with the underlying criminal offense 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.

(2) Any person who claims that the property was assigned to him or to her prior to the seizure of the property under this chapter shall file a claim with the court pursuant to Section 11488.5 declaring an interest in that property and such interest shall be adjudicated at the forfeiture hearing. The property shall remain under control of the law enforcement or prosecutorial agency until the adjudication of the forfeiture hearing.

(3) The claim of a law enforcement agency to property seized pursuant to Section 11488 shall have priority over a claim to the seized property made by the Franchise Tax Board in a notice to withhold issued pursuant to Section 18817 or 26132 of the Revenue and Taxation Code.

(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 subdivision (e), (f), or (g) of Section 11470 forfeited to the state upon conviction of a violation set forth in subdivision (e), (f), or (g) of Section 11470.

(2) The clerk of the court shall dispose of the forfeited property as set forth in Section 11489.

(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 (e), (f), or (g) of Section 11470.

(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 (e), (f), or (g) of Section 11470. Except as provided in Section 11473.2, the clerk of the court shall dispose of the forfeited property as set forth in Section 11489.

(g) All seized property which was the subject of the forfeiture hearing and which was not forfeited shall remain subject to any order to withhold issued with respect to the property by the Franchise Tax Board.

(h) This section shall become operative on January 1, 1989.

SEC. 8. Section 11489 of the Health and Safety Code is amended to read:

11489. Notwithstanding Section 11502 and except as otherwise provided in Sections 11473 and 11473.2, in all cases where the 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 that person.

(b) The balance, if any, to accumulate, and to be distributed and transferred quarterly in the following manner:

(1) To the state agency 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) The remaining funds shall be distributed as follows:

(A) Sixty-five percent to the state, local, or state and local law enforcement entities that participated in the seizure distributed so as to reflect the proportionate contribution of each agency.

(B) Ten percent to the prosecutorial agency which processes the forfeiture action.

(C) Twenty percent to the State Department of Mental Health for deposit in the Mental Health Primary Prevention Fund for primary prevention programs in accordance with Chapter 1083 of the Statutes of 1981. There is hereby created in the State Treasury the Mental Health Primary Prevention Fund. Notwithstanding Section 13340 of the Government Code, the moneys in the Mental Health Primary Prevention Fund are hereby continuously appropriated to the State Department of Mental Health to expend for primary prevention programs in accordance with Chapter 6 (commencing with Section 5475) of Part 1 of Division 5 of the Welfare and Institutions Code. Expenditures may include administrative costs incurred by the department. These administrative costs are not to exceed 5 percent of the fund. 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 Mental Health Primary Prevention Fund.

(D) Five percent to eligible nonprofit organizations established for the purposes of aiding those seizures and forfeitures. Moneys shall be used to fund the operations of those organizations where it has been determined that information provided by the organization resulted in the seizure of these funds. In all other instances these moneys shall be deposited into the Narcotics Assistance and Relinquishment by Criminal Offenders Fund. The eligibility criteria and amount of funds to be allocated under this subparagraph shall be determined by each county pursuant to county ordinance.

(c) Notwithstanding Item 0820-101-469 of the Budget Act of 1985 (Chapter 111 of the Statutes of 1985), all funds allocated to the Department of Justice pursuant to subparagraph (A) of paragraph

(2) of subdivision (b) shall be deposited into the Department of Justice Special Deposit Fund—State Asset Forfeiture Account and used for the law enforcement efforts of the state or for state or local law enforcement efforts pursuant to Section 11493.

All funds allocated to the Department of Justice by the federal government under its Federal Asset Forfeiture program authorized by the Comprehensive Crime Control Act of 1984 may be deposited directly into the Narcotics Assistance and Relinquishment by Criminal Offender Fund and used for state and local law enforcement efforts pursuant to Section 11493.

Funds which are not deposited pursuant to the above paragraph shall be deposited into the Department of Justice Special Deposit Fund-Federal Asset Forfeiture Account.

(d) All the funds distributed to the state or local governmental entity pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (b) shall not supplant any state or local funds that would, in the absence of this subdivision, be made available to support the law enforcement and prosecutorial efforts of these agencies.

The court shall order the forfeiture proceeds distributed to the state, local, or state and local governmental entities as provided in this section.

For the purposes of this section, "local governmental entity" means any city, county, or city and county in this state.

All property seized and all proceeds from the sale of property seized pursuant to this chapter prior to October 2, 1985, shall be distributed in accordance with the provisions of this section.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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 provide for the proper implementation of recently enacted legislation relating to controlled substances, it is necessary for this act to take effect immediately.

CHAPTER 925

An act to amend Sections 101, 205, 19000, 19004, 19019, 19022, 19030, 19034, 19059.7, 19161.5, 19174, and 19175 of, and to add Sections 19074 and 19213.1 to, the Business and Professions Code, and to amend the heading of Chapter 10.5 (commencing with Section 25910) of Division 15 of the Public Resources Code, relating to consumer affairs, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of:

(a) The Board of Dental Examiners of California.

(b) The Board of Medical Quality Assurance of the State of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Board of Examiners in Veterinary Medicine.

(f) The State Board of Accountancy.

(g) The California State Board of Architectural Examiners.

(h) The State Board of Barber Examiners.

(i) The State Board of Registration for Professional Engineers and Land Surveyors.

(j) The Contractors' State License Board.

(k) The State Board of Cosmetology.

(*l*) The State Board of Funeral Directors and Embalmers.

(m) The Structural Pest Control Board.

(n) The Bureau of Home Furnishings and Thermal Insulation.

(o) The Board of Registered Nursing.

(p) The State Board of Dry Cleaning and Fabric Care.

(q) The Board of Chiropractic Examiners.

(r) The Board of Behavioral Science Examiners.

(s) The State Athletic Commission.

(t) The Cemetery Board.

(u) The State Board of Guide Dogs for the Blind.

(v) The Bureau of Collection and Investigative Services.

(w) The Certified Shorthand Reporters Board.

(x) The Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.

(y) The California State Board of Landscape Architects.

(z) The Bureau of Repair Services.

(aa) The Bureau of Employment Agencies.

(ab) The Board of Osteopathic Examiners.

(ac) The Division of Investigation.

(ad) The Bureau of Automotive Repair.

(ae) The State Board of Registration for Geologists and Geophysicists.

(af) The State Board of Examiners of Nursing Home Administrators.

(ag) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 2. Section 205 of the Business and Professions Code is amended to read:

205. There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:

Accountancy Fund.
California State Board of Architectural Examiners' Fund.
Athletic Commission Fund.
State Board of Barber Examiners' Fund.
Cemetery Fund.
Contractors' License Fund.
Board of Cosmetology's Contingent Fund.
State Dentistry Fund.
Dry Cleaning and Fabric Care Fund.
State Funeral Directors and Embalmers' Fund.
Bureau of Home Furnishings and Thermal Insulation Fund.
State Board of Landscape Architects' Fund.
Contingent Fund of the Board of Medical Examiners.
Board of Nurse Examiners' Fund.
State Optometry Fund.
Pharmacy Board Contingent Fund.
Physical Therapy Fund.
Private Investigator and Adjuster Fund.
Professional Engineers' and Land Surveyors' Fund.
Consumer Affairs Fund.
Behavioral Science Examiners Fund.
Shorthand Reporters' Fund.
Structural Pest Control Fund.
Board of Veterinary Examiners' Contingent Fund.
Vocational Nurse Examiners' Fund.

For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each such account or fund shall be available for expenditure only for such purposes as are now or may hereafter be provided by law.

SEC. 3. Section 19000 of the Business and Professions Code is amended to read:

19000. This chapter may be cited as the Home Furnishings and Thermal Insulation Act.

SEC. 4. Section 19004 of the Business and Professions Code is amended to read:

19004. (a) "Bureau" refers to the Bureau of Home Furnishings and Thermal Insulation.

(b) "Chief" refers to the chief of the bureau.

(c) "Inspector" refers to an inspector either employed by, or under contract to, the bureau.

(d) "Director" refers to the Director of Consumer Affairs.

(e) "Department" refers to the Department of Consumer Affairs.

(f) "Board" refers to the California Advisory Board of Home Furnishings.

SEC. 5. Section 19019 of the Business and Professions Code is amended to read:

19019. "Insulation material" means any material or combination of materials applied or installed within or contiguous to a roof, wall, ceiling, or floor of a building or structure, or contiguous to the surface of any appliance or its intake or outtake mechanism, for the purpose of reducing heat transfer and thus energy requirements for heating and cooling or reducing adverse temperature fluctuations of the building, room, appliance, or structure.

SEC. 6. Section 19022 of the Business and Professions Code is amended to read:

19022. (a) An "insulation manufacturer" is any person who produces insulation materials or a combination of materials which, when properly applied or installed without any alteration, dilution, or modification so as to affect the thermal or physical properties, performance, or intended use as supplied by the manufacturer, retards the transfer of heat or cold. "Insulation manufacturer" also includes any person who produces finished products whose function is insulation, including, but not limited to, insulated roof and wall panels, insulation kits, pipe insulation, flexible insulated ducting, spray applied insulation systems, or other similar material.

(b) Anyone who alters, substitutes, or recompounds any insulation product or material shall be considered to be the manufacturer of that particular insulation product.

(c) Any applicator, contractor, or fabricator of insulation materials, who installs, applies, or uses insulation materials for their intended use, without changing the thermal or physical properties of the insulation material, shall not be considered an insulation manufacturer, provided that the manufacturer of the insulation material has been licensed in accordance with this chapter.

(d) As used in subdivision (b) "alteration," "substitution," or "recompounding" includes:

(1) The attachment of facings or vapor barriers, including, but not limited to, plastic, metal, felt, paper, or other similar materials.

(2) The compression, expansion, or reshaping of insulation materials.

(3) The addition of, or mixing with adhesives.

(4) In the case of spray applied or foamed in place insulation, any addition to, substitution of, or deletion from the chemical system provided by the insulation manufacturers.

(e) This chapter does not apply to the attaching of fiberglass insulation to metal duct work by a licensed contractor using industry-accepted adhesives and metal pins.

(f) This chapter does not apply to the attaching of fiberglass insulation to metal duct work by a licensed contractor using industry-accepted adhesives and metal pins.

SEC. 7. Section 19030 of the Business and Professions Code is amended to read:

19030. The Bureau of Home Furnishings in the department under the supervision and control of the chief is continued in existence as the Bureau of Home Furnishings and Thermal Insulation.

SEC. 8. Section 19034 of the Business and Professions Code is amended to read:

19034. With the approval of the director, the chief may adopt rules and regulations necessary for the administration of this chapter and declaring the policy of the bureau, and shall determine when any article, not otherwise clearly defined, is "upholstered furniture" or "bedding" or "insulation" under the provisions of this chapter.

SEC. 9. Section 19059.7 of the Business and Professions Code is amended to read:

19059.7. Every insulation manufacturer who sells insulation material in California shall hold an insulation manufacturing license issued by the bureau. Manufacturers having more than one manufacturing plant shall hold a single license for all plants under the same ownership producing the same generic type of insulation. The total annual license fee for any insulation manufacturer shall not exceed eight thousand dollars ($8,000).

SEC. 10. Section 19074 is added to the Business and Professions Code, to read:

19074. This chapter does not apply to the manufacturer of insulating window or door glass or products containing insulating window or door glass.

SEC. 11. Section 19161.5 of the Business and Professions Code is amended to read:

19161.5. The chief of the bureau, subject to the approval of the Director of Consumer Affairs, may in his or her discretion exempt items of upholstered furniture which are deemed not to pose a serious fire hazard from the fire retardant requirements of Section 19161.

SEC. 12. Section 19174 of the Business and Professions Code is amended to read:

19174. All fees collected under this chapter shall be reported to the Controller and paid to the Treasurer and credited to the Bureau of Home Furnishings and Thermal Insulation Fund, to be expended only in carrying out this chapter.

SEC. 13. Section 19175 of the Business and Professions Code is amended to read:

19175. (a) All fees collected by the bureau relating to insulation

standards shall be credited to the Bureau of Home Furnishings and Thermal Insulation Fund to be expended only for carrying out provisions of this chapter relating to insulation standards.

(b) All fees collected by the bureau relating to the home furnishings program shall be credited to the Bureau of Home Furnishings and Thermal Insulation Fund to be expended only for carrying out the provisions of this chapter relating to the home furnishings program.

SEC. 14. Section 19213.1 is added to the Business and Professions Code, to read:

19213.1. The bureau may require a licensee who sells or manufactures furniture and bedding products that are inspected and found not to be in compliance with this chapter, or any regulation implementing it, to pay those reasonable fees as are necessary to cover the costs of inspections and testing necessary to investigate and enforce compliance by those licenses. The range of fees for testing or inspection shall be fixed by the bureau in an amount not less than two hundred dollars ($200) and not more than five hundred dollars ($500) for each test or inspection.

SEC. 15. The heading of Chapter 10.5 (commencing with Section 25910) of Division 15 of the Public Resources Code is amended to read:

CHAPTER 10.5. INSULATION MATERIAL STANDARDS

SEC. 16. It is the intent of the Legislature that the inspection program in the Bureau of Home Furnishings and Thermal Insulation shall be reviewed and evaluated by the bureau, including the effect of decentralization of inspectors from the Division of Investigation. The bureau shall take appropriate action based on the results of this analysis to maintain the effectiveness of its activities.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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. 18. 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 add specificity, eliminate ambiguities, and otherwise clarify the the regulatory authority of the Bureau of Home Furnishings and Thermal Insulation over insulation materials and home furnishings, it is necessary that this act take effect immediately.

CHAPTER 926

An act to repeal Sections 25332 and 25333 of the Health and Safety Code, and to amend Sections 3 and 4 of Chapter 1428 of the Statutes of 1985, relating to hazardous substances, and making an appropriation therefor.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 25332 of the Health and Safety Code is repealed.

SEC. 2. Section 25333 of the Health and Safety Code is repealed.

SEC. 3. Section 3 of Chapter 1428 of the Statutes of 1985 is amended to read:

Sec. 3. The sum of twenty-one million four hundred thousand dollars ($21,400,000) is hereby appropriated from the contingency reserve for economic uncertainties in the General Fund, as provided in Section 12.30 of the Budget Act of 1985 (Chapter 111, Statutes of 1985), as follows:

(a) Sixteen million dollars ($16,000,000) to State Department of Health Services for expenditure at the Stringfellow Acid Pits without regard to fiscal years in accordance with the following schedule:

Schedule:

(1) To provide a permanent alternative water supply to residents in Glen Avon who now receive bottled water from the state	$ 1,600,000
(2) To conduct a comprehensive health study of former and current residents near the Stringfellow Acid Pits to identify and assess both acute and chronic health problems that may be linked to contaminants from the Stringfellow site.....	$ 800,000
(3) To establish a Special Stringfellow Reserve Account to be used by the department to fund special investigations and remedial or emergency actions that are necessary to fully protect the health of the residents near Stringfellow if the department determines that funds are not available from other sources including the federal En-	

vironmental Protection Agency, the responsible parties, the Hazardous Substance Account, and the Hazardous Substance Cleanup Fund	$13,600,000

(b) One million four hundred thousand dollars ($1,400,000) to the State Department of Health Services for expenditure without regard to fiscal years for the design, purchase, and installation of activated carbon adsorption water treatment systems for the Rurban Homes and Richwood Mutual Water Companies and the expansion of the existing carbon treatment system for the Hemlock Mutual Water Company. The department shall maximize the use of federal funds and shall enter into a written agreement with the Environmental Protection agency in which the department agrees to reimburse the agency for expenditures which exceed the agency's portion of design, purchase, and installation costs pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

Any funds remaining following the installation of water treatment systems pursuant to this subdivision shall be deposited in the subaccount for site operation and maintenance established pursuant to Section 4 of Chapter 1428 of the Statutes of 1985.

(c) Four million dollars ($4,000,000) to be transferred by the Controller to the Emergency Clean Water Grant Fund. This amount is available to the State Department of Health Services without regard to fiscal years, pursuant to Section 4030.9 of the Health and Safety Code, to take remedial action to ensure safe water supplies at public water systems where there is an imminent threat to public health due to contamination of the public water supply and for which the department determines that the situation would not otherwise be adequately addressed through an action funded by any other private, local, state, or federal agency or funding source, including the Hazardous Substance Account and the Hazardous Substance Cleanup Fund. Four hundred thousand dollars ($400,000) shall be used to design, purchase, and install water filtration systems for nitrate removal for the McFarland Mutual Water Company.

SEC. 4. Section 4 of Chapter 1428 of the Statutes of 1985 is amended to read:

Sec. 4. Upon installation of the carbon adsorption water treatment systems funded in subdivision (b) of Section 3 of this act, the State Department of Health Services shall establish, pursuant to Section 25330.5 of the Health and Safety Code, a subaccount for site operation and maintenance for remedial measures affecting the San Gabriel Valley Superfund site, and shall deposit in the subaccount sufficient funds to cover the costs of operation and maintenance of the carbon adsorption water treatment systems at the Richwood, Hemlock, and Rurban Homes Mutual Water Companies for 20 years. The State Department of Health Services may expend funds from

the subaccount established pursuant to this section only to the extent that federal funds for operation and maintenance are not available pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.). The funds shall be allocated from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund.

CHAPTER 927

An act to add Chapter 5 (commencing with Section 66000) to Division 1 of Title 7 of the Government Code, relating to development projects.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Chapter 5 (commencing with Section 66000) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 5. FEES FOR DEVELOPMENT PROJECTS

66000. As used in this chapter:

(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction, other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, or fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district; provided that "local agency" does not include a school district if Senate Bill No. 97 of the 1987–88 Regular Session is enacted and becomes effective on or before January 1, 1988.

(d) "Public facilities" includes public improvements, public services, and community amenities.

66001. (a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall do all of the

following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Sections 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 53077.

(d) The local agency shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five or more years after deposit of the fee to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged. The findings required by this subdivision need only be made for moneys in the possession of the local agency and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date.

(e) The local agency shall refund to the then current record owner or owners of the development project or projects on a prorated basis the unexpended or uncommitted portion of the fee, and any interest accrued thereon, for which need cannot be demonstrated pursuant to this subdivision. A local agency may refund the unexpended or uncommitted revenues by direct payment, by providing a temporary suspension of fees, or by any other means consistent with the intent of this section. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

If the administrative costs of refunding unexpended or uncommitted revenues pursuant to this subdivision exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development

project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed.

66002. (a) Any local agency which levies a fee subject to Section 66001 may adopt a capital improvement plan, which shall indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

(b) The capital improvement plan shall be adopted by, and shall be annually updated by, a resolution of the governing body of the local agency adopted at a noticed public hearing. Notice of the hearing shall be given pursuant to Section 65090. In addition, mailed notice shall be given to any city or county which may be significantly affected by the capital improvement plan. This notice shall be given no later than the date the local agency notices the public hearing pursuant to Section 65090. The information in the notice shall be not less than the information contained in the notice of public hearing and shall be given by first-class mail or personal delivery.

(c) "Facility" or "improvement," as used in this section, means any of the following:

(1) Public buildings, including schools and related facilities; provided that school facilities shall not be included if Senate Bill 97 of the 1987–88 Regular Session is enacted and becomes effective on or before January 1, 1988.

(2) Facilities for the storage, treatment, and distribution of nonagricultural water.

(3) Facilities for the collection, treatment, reclamation, and disposal of sewage.

(4) Facilities for the collection and disposal of storm waters and for flood control purposes.

(5) Facilities for the generation of electricity and the distribution of gas and electricity.

(6) Transportation and transit facilities, including but not limited to streets and supporting improvements, roads, overpasses, bridges, harbors, ports, airports, and related facilities.

(7) Parks and recreation facilities.

(8) Any other capital project identified in the capital facilities plan adopted pursuant to Section 66002.

66003. This chapter does not apply to a fee imposed pursuant to a reimbursement agreement by and between a city or county and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution, because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement

available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 2 of Title 2 of the Government Code.

CHAPTER 928

An act to add Section 1444.6 to the Health and Safety Code, relating to county medical facilities.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 1444.6 is added to the Health and Safety Code, to read:

1444.6. If a county hospital requests an ambulance to transfer a mental health patient who is unstable and has a history of being assaultive to another facility, notwithstanding any other provision of law, the director of the hospital or a designee shall inform the ambulance personnel of the instability and potential assaultiveness of the mental health patient. The county hospital shall establish procedures as are necessary to assure that the notification required by this section is given in appropriate cases and to assure that these notifications are documented.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 4 of Title 2 of the Government Code.

CHAPTER 929

An act to amend Sections 1260, 1265.5, 1265.6, and 1379 of the Unemployment Insurance Code, relating to unemployment.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 1260 of the Unemployment Insurance Code is amended to read:

1260. (a) An individual disqualified under Section 1256, under a determination transmitted to him or her by the department, is ineligible to receive unemployment compensation benefits for the

week in which the act that causes his or her disqualification occurs and continuing until he or she has, subsequent to the act that causes disqualification and his or her registration for work, performed service in bona fide employment for which remuneration is received equal to or in excess of five times his or her weekly benefit amount.

(b) An individual disqualified under subdivision (b) of Section 1257, under a determination transmitted to him or her by the department, is ineligible to receive unemployment compensation benefits for not less than 2 nor more than 10 consecutive weeks beginning with:

(1) The week in which the cause of his or her disqualification occurs, if he or she registers for work in that week.

(2) The week subsequent to the occurrence of the cause of his or her disqualification in which he or she first registers for work, if he or she does not register for work in the week in which the cause of his or her disqualification occurs.

(c) An individual disqualified under subdivision (a) of Section 1257, under a determination transmitted to him or her by the department, is ineligible to receive unemployment compensation benefits for the week in which the determination is mailed to or personally served upon him or her, or any subsequent week, for which he or she is first otherwise in all respects eligible for unemployment compensation benefits and for not more than nine subsequent weeks for which he or she is otherwise in all respects eligible for unemployment compensation benefits. No disqualification under this subdivision shall be applied to any week if all or any portion of the week is beyond the three-year period next succeeding the date of the mailing or personal service of the determination. This subdivision shall not apply to an individual convicted under Section 2101.

(d) Notwithstanding subdivision (c), an individual who is subject to a disqualification that is imposed under subdivision (b) of Section 1257 may, if he or she is otherwise in all respects eligible for unemployment compensation benefits, concurrently serve a disqualification imposed under subdivision (a) of Section 1257.

SEC. 2. Section 1265.5 of the Unemployment Insurance Code is amended to read:

1265.5. Notwithstanding any other provision of this division, payments to an individual for vacation pay which was earned but not paid for services performed prior to termination of employment, or commencement of unemployment caused by disability, as the case may be, shall not be construed to be wages or compensation for personal services under this division and benefits payable under this division shall not be denied or reduced because of the receipt of these payments.

SEC. 3. Section 1265.6 of the Unemployment Insurance Code is amended 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 from a definite period of layoff. 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 holiday falls, if holiday pay is paid prior to the individual's return to work from a definite period of layoff.

However, payments to an individual for holiday pay which was earned but not paid prior to an indefinite layoff, or termination of employment, or commencement of unemployment caused by disability, as the case may be, shall not be construed to be wages or compensation for personal services under this division and benefits payable under this division shall not be denied or reduced because of the receipt of these payments.

SEC. 4. Section 1379 of the Unemployment Insurance Code is amended to read:

1379. The director, subject to the provisions of this article, may do any or all of the following in the recovery of overpayments of unemployment compensation benefits:

(a) File a civil action against the liable person for the recovery of the amount of the overpayment within one year after any of the following:

(1) The mailing or personal service of the notice of overpayment determination if the person affected does not file an appeal to an administrative law judge.

(2) The mailing of the decision of the administrative law judge if the person affected does not initiate a further appeal to the appeals board.

(3) The date of the decision of the appeals board.

(b) Initiate proceedings for a summary judgment against the liable person. However, this subdivision applies only where the director has found, pursuant to Section 1375, that the overpayment may not be waived because it was due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient. The director may, not later than one year after the overpayment became final, file with the clerk of the proper court in the county from which the overpayment of benefits was paid or in the county in which the claimant resides, a certificate containing all of the following:

(1) The amount due, including the assessment made under Section 1375.1, plus interest from the date that the initial determination of overpayment was made pursuant to Section 1376.

(2) A statement that the director has complied with all the provisions of this article prior to the filing of the certificate.

(3) A request that judgment be entered against the liable person in the amount set forth in the certificate.

The clerk immediately upon the filing of the certificate shall enter a judgment for the State of California against the liable person in the amount set forth in the certificate.

For the purposes of this subdivision only, an overpayment is final and due and payable after any of the following:

(A) The liable person has not filed an appeal pursuant to Section 1377.

(B) The liable person has filed an appeal to the administrative law judge and a decision of an administrative law judge has become final.

(C) The liable person has filed an appeal to the appeals board and the decision of the appeals board has become final because the liable person has not sought judicial review within the six-month period provided by Section 410.

(c) Offset the amount of the overpayment received by the liable person against any amount of benefits to which he or she may become entitled under this division within six years of the date of the mailing or personal service of the notice of overpayment determination.

SEC. 5. The amendments made to Sections 2626.1 and 2626.2 of the Unemployment Insurance Code by Chapter 255 of the Statutes of 1987 shall apply to periods of disability commencing on or after January 1, 1988.

CHAPTER 930

An act to amend Sections 7026.10, 7029.1, 7058.5, 7068.2, 7099, and 7143 of, and to add Sections 7026.2 and 7083.1 to, the Business and Professions Code, relating to contractors, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1987 Filed with Secretary of State September 22, 1987]

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

SECTION 1. Section 7026.10 of the Business and Professions Code is amended to read:

7026.10. Any person, licensed or unlicensed, who willfully and intentionally uses, with intent to defraud, a contractor's license number which does not correspond to the number on a currently valid contractor's license held by that person is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in state prison, or in county jail for not more than one year, or by both the fine and imprisonment.

SEC. 2. Section 7026.2 is added to the Business and Professions Code, to read:

7026.2. As used in this article, "contractor" includes any person, consultant to an owner-builder, firm, association, organization, partnership, business trust, corporation, or company, who or which undertakes to, offers to undertake to, purports to have the capacity to undertake to, or, except in the case of a joint venture which

qualifies for a joint venture license under Section 7029, submits a bid to or does itself or by or through others, or on behalf of an owner-builder submits a bid to, construct any building or home improvement project, or part thereof.

SEC. 3. Section 7029.1 of the Business and Professions Code is amended to read:

7029.1. It is unlawful for any two or more licensees, each of whom has been issued a license to act separately in the capacity of a contractor within this state, to be awarded a contract jointly or otherwise act as a contractor without first having secured a joint venture license in accordance with the provisions of this chapter as provided for an individual, partnership or corporation. Any violation of this section shall also constitute a cause for disciplinary action. If a combination of licensees submit a bid for the performance of work for which a joint venture license is required, a failure to obtain that license shall not prevent the imposition of any penalty specified by law for the failure of a contractor who submits a bid to enter into a contract pursuant to the bid.

SEC. 4. Section 7058.5 of the Business and Professions Code is amended to read:

7058.5. (a) On and after January 1, 1987, no contractor shall engage in asbestos-related work, as defined in Section 6501.8 of the Labor Code, which involves 100 square feet or more of surface area of asbestos containing materials, unless the qualifier for the license passes an asbestos certification examination. Additional updated asbestos certification examinations may be required based on new health and safety information. The decision on whether to require an updated certification examination shall be made by the Contractors' State License Board, in consultation with the Division of Occupational Safety and Health in the Department of Industrial Relations and the State Department of Health Services.

No asbestos certification examination shall be required for contractors involved with the installation, maintenance, and repair of asbestos cement pipe or sheets, vinyl asbestos floor materials, or asbestos bituminous or resinous materials.

"Asbestos" as used in this section, has the same meaning as defined in Section 6501.7 of the Labor Code.

(b) On or after January 1, 1987, and until December 31, 1989, the Contractors' State License Board shall develop, and deliver to all contractors at each renewal thereafter, and to all applicants with the request for bond and fee, a booklet containing information relative to handling and disposal of asbestos, together with an open book examination concerning asbestos-related work. All contractors and applicants for a contractor's license shall complete and sign the open book examination and submit it to the Contractors' State License Board with the required renewal or bond and fee. On or after January 1, 1990, only applicants for an original license shall complete and sign the open book examination and submit it to the Contractors' State License Board with the required bond and fee.

SEC. 5. Section 7068.2 of the Business and Professions Code is amended to read:

7068.2. If the responsible managing officer or responsible managing employee disassociates from the licensed entity, the licensee, or the qualifier shall notify the registrar in writing, and the licensee shall replace the qualifier, within 90 days from the date of disassociation.

To replace a responsible managing officer or responsible managing employee, the licensee shall file an application as prescribed by the registrar, accompanied by the fee fixed by this chapter, designating an individual to qualify as required by this chapter.

Upon failure to replace the qualifier within 90 days of the disassociation the license shall be automatically suspended or the classification removed at the end of the 90 days.

The registrar may review and accept the petition of a licensee who disputes the date of disassociation or who has failed to notify and replace the qualifier within the prescribed time, upon a showing of good cause by the contractor. This petition shall be received within 90 days from the date of the board's notice that the license will be suspended if the qualifier is not replaced. The registrar may grant only one 90-day extension to replace the qualifier.

Upon failure of the licensee or the qualifier to notify the registrar of the disassociation within 90 days from the date of disassociation, the license shall be automatically suspended or the classification removed and the qualifier removed from the license effective the date the written notification is received at the board's headquarters office.

The person qualifying on behalf of an individual or firm under subdivision (a), (b), or (c) of Section 7068 shall be responsible for the licensee's construction operations until the board receives the written notification of disassociation.

Failure of the licensee or the qualifier to notify the registrar of the qualifier's disassociation within 90 days of the disassociation is grounds for disciplinary action.

SEC. 6. Section 7083.1 is added to the Business and Professions Code, to read:

7083.1. Any licensee whose license is expired, canceled, or inactive, shall notify the registrar in writing of any change of address of record within 90 days, and shall maintain a current address of record during the three-year period immediately following the expiration, cancellation, or inactivation of the license.

SEC. 7. Section 7099 of the Business and Professions Code is amended to read:

7099. If, upon investigation, the registrar has probable cause to believe that a licensee, or an applicant for a license under this chapter, has committed any acts or omissions which are grounds for denial, revocation, or suspension of license, he or she may, in lieu of proceeding pursuant to this article, issue a citation to the licensee or applicant. Each citation shall be in writing and shall describe with

particularity the nature of the violation, including a reference to the provisions alleged to have been violated. In addition, each citation may contain an order of correction fixing a reasonable time for correction of the violation or an order, against the licensee only, for payment of a specified sum to an injured party in lieu of correction, and may contain an assessment of a civil penalty.

SEC. 8. Section 7143 of the Business and Professions Code is amended to read:

7143. A license which is suspended for any reason which constitutes a basis for suspension under this chapter, is subject to expiration and shall not be renewed as active. The license may only be renewed as inactive, but such renewal does not entitle the licensee, while the license remains suspended, and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

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:

This bill will save the Contractors' State License Board a substantial amount of money through prompt enactment; thus, it is necessary that this act take effect immediately.

CHAPTER 931

An act to amend Section 211.3 of the Health and Safety Code, relating to health.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 211.3 of the Health and Safety Code is amended to read:

211.3. (a) The director shall establish a statewide system for the collection of information determining the incidence of cancer, using population-based tumor registries modeled after the Cancer Surveillance Program of Orange County. As of the effective date of this section the director shall begin phasing in the statewide cancer reporting system. By July 1, 1988, all county or regional registries shall be implemented or initiated. By July 1, 1990, the statewide cancer reporting system shall be fully operational. Within 60 days of the effective date of this section, the director shall submit an implementation and funding schedule to the Legislature.

(b) The department may designate any demographic parts of the state as regional cancer incidence reporting areas and may establish

regional cancer registries, with the responsibility and authority to carry out the intent of this section in designated areas. Designated regional registries shall provide, on a timely basis, cancer incidence data as designated by the department to the department. The department may contract with an agency, including, but not limited to, a health systems agency, single county health department, multicounty health department grouping, or nonprofit professional association, representing a designated cancer reporting region for the purposes of collecting and collating cancer incidence data.

(c) The director shall designate cancer as a disease required to be reported in the state or any demographic parts of the state in which cancer information is collected under this section. All cancers diagnosed or treated in the reporting area shall thereafter be reported to the representative of the state department authorized to compile the cancer data, or any individual, agency, or organization designated to cooperate with that representative.

(d) (1) Any hospital or other facility providing therapy to cancer patients within an area designated as a cancer reporting area shall report each case of cancer to the department or the authorized representative of the department in a format prescribed by the department. If the hospital or other facility fails to report in a format prescribed by the department, the department's authorized representative may access the information from the hospital or the facility and report it in the appropriate format. In these cases, the hospital or other health facility shall reimburse the department or the authorized representative for its cost to access and report the information.

(2) Any physician, dentist, podiatrist, or other health care practitioner diagnosing or providing treatment for cancer patients shall report each cancer case to the department or the authorized representative of the department except for those cases directly referred to a treatment facility or those previously admitted to a treatment facility for diagnosis or treatment of that instance of cancer.

(e) Any hospital or other facility which is required to reimburse the department or its authorized representative for the cost to access and report the information pursuant to subdivision (d) shall provide payment to the department or its authorized representative within 60 days of the date this payment is demanded. In the event any hospital or other facility fails to make the payment to the department or its authorized representative within 60 days of the date the payment is demanded, the department or its authorized representative may, at its discretion, assess a late fee not to exceed 1½ percent per month of the outstanding balance. Further, in the event that the department or its authorized representative takes a legal action to recover its costs and any associated fees, and the department or its authorized representative receives a judgment in its favor, the hospital or other facility shall also reimburse the department or its authorized representative for any additional costs

it incurred to pursue the legal action. Late fees and payments made to the department by hospitals or other facilities pursuant to this subdivision shall be considered as reimbursements of the additional costs incurred by the department.

(f) All physicians, hospitals, outpatient clinics, nursing homes and all other facilities, individuals or agencies providing diagnostic or treatment services to patients with cancer shall grant to the department or the authorized representative access to all records which would identify cases of cancer or would establish characteristics of the cancer, treatment of the cancer, or medical status of any identified cancer patient. Willful failure to grant access to those records shall be punishable by a fine of up to five hundred dollars ($500) each day access is refused. Any fines collected pursuant to this subdivision shall be deposited in the General Fund.

(g) All information reported pursuant to this section shall be confidential, as provided in Section 211.5, and shall be used for the purpose of determining the sources of malignant neoplasms and evaluating measures designed to eliminate, alleviate, or ameliorate their effect.

(h) For the purpose of this section, "cancer" means all malignant neoplasms, regardless of the tissue of origin, including malignant lymphoma, Hodgkins disease, and leukemia, but excluding basal cell and squamous cell carcinoma of the skin.

(i) Nothing in this section shall preempt the authority of facilities or individuals, providing diagnostic or treatment services to patients with cancer, to maintain their own facility-based tumor registries.

(j) It is the intent of the Legislature that the department, in establishing a system pursuant to this section, maximize the use of available federal funds.

CHAPTER 932

An act to amend Section 41805.5 of the Health and Safety Code, and to add Sections 13273.1, 13273.2, and 13273.3 to the Water Code, relating to solid waste, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987]

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

SECTION 1. Section 41805.5 of the Health and Safety Code is amended to read:

41805.5. (a) Except as provided in subdivisions (b) and (c), the operator of a solid waste disposal site shall submit to the district on or before July 1, 1987, a solid waste air quality assessment test report that contains all of the following:

(1) Test results to determine if there is any underground landfill gas migration beyond the solid waste disposal site's perimeter.

(2) Analyses for specified air contaminants in the ambient air adjacent to the solid waste disposal site to determine the effect of the site on air quality.

(3) Chemical characterization test results to determine the composition of gas streams immediately above the solid waste disposal site, or immediately above the solid waste disposal site and within the solid waste disposal site, as appropriate, as determined by the district.

(4) Any other information which the district board may require, by emergency regulation.

The solid waste air quality assessment test report shall be prepared in accordance with the guidelines developed by the state board pursuant to subdivision (d).

(b) The operator of an inactive solid waste disposal site shall complete and submit the screening questionnaire, developed pursuant to subdivision (e), to the district on or before November 1, 1986, unless the operator is required to submit a report containing the same information specified in subdivision (a) pursuant to a federal, state, or district order, or unless exempted pursuant to subdivision (c). The district shall evaluate the submitted screening questionnaires in accordance with the guidelines developed pursuant to subdivision (e) and shall determine whether the operator of the site be required to submit all, or a portion of, the information required to be reported in a solid waste air quality assessment test report. The district shall notify the operator in writing on or before January 1, 1987, of the information identified in subdivision (a) to be submitted for the site. After receiving this notification, the operator of the inactive solid waste disposal site shall submit a solid waste air quality assessment test report containing the required information on or before January 1, 1988, to the district.

(c) A district may exempt from subdivisions (a) and (b) a solid waste disposal site or inactive solid waste disposal site which has accepted or now contains only inert and nondecomposable solids. To receive an exemption, the operator of the site shall submit, on or before November 1, 1986, a copy of all permits, all waste discharge requirements pertinent to the site, and any other data necessary for the district to determine whether an exemption should be granted to the site.

(d) On or before February 1, 1987, the state board, in coordination with the districts, shall develop and publish test guidelines for the solid waste air quality assessment report specifying the air contaminants to be tested for and identifying acceptable testing, analytical, and reporting methods to be employed in completing the report.

(e) On or before October 1, 1986, the state board, in coordination with the districts, shall develop and publish a screening questionnaire for inactive solid waste disposal sites and guidelines for

evaluating the questionnaire by the districts pursuant to subdivision (b). The screening questionnaire and guidelines shall require an inactive solid waste disposal site to be evaluated based on the nature and age of materials in the site, the quantity of materials in the site, the size of the site, and other appropriate factors. The guidelines for evaluating the screening questionnaire shall require a district to weigh heavily the proximity of the site to residences, schools, and other sensitive areas, and to pay particular attention to potential adverse impacts on facilities such as hospitals and schools, and on residential areas, within one mile of the site's perimeter.

(f) A district may reevaluate the status of a solid waste disposal site, including sites exempted pursuant to subdivision (c), and require the operator to submit or revise a solid waste air quality assessment test report after January 1, 1987. The district shall give written notification to the operator of the solid waste disposal site that a solid waste air quality assessment test report is to be submitted, or that the existing report is to be revised, and the date by which the report is to be submitted.

(g) A district shall evaluate any solid waste air quality assessment test reports submitted pursuant to subdivisions (a), (b), and (f), and determine if the report's testing, analytical and reporting methods comply with the guidelines developed pursuant to subdivision (d). If the district determines that the solid waste air quality assessment test report complies with the guidelines, it shall evaluate the data. If the district determines, after evaluation of the report and consultation with the state department and the California Waste Management Board, that levels of one or more specified air contaminants pose a health risk to human beings or a threat to the environment, the district shall take appropriate remedial action.

(h) If a district determines that a solid waste air quality assessment test report does not comply with the guidelines developed pursuant to subdivision (d), the district shall provide the operator of the site with a written notice specifying the inadequacies of the report and shall require the operator to correct the deficiencies and resubmit the report by a date determined by the district.

(i) For the purpose of this section, the following definitions apply:

(1) "Inactive solid waste disposal site" means a solid waste disposal site which has not received any solid waste for disposal after January 1, 1984.

(2) "Landfill gas" means any untreated, raw gas derived through a natural process from the decomposition of organic waste deposited in a solid waste disposal site or from the evolution of volatile species in the waste.

(3) "Operator" means the person who operates or manages, or who has operated or managed, the solid waste disposal site. If the operator of the solid waste disposal site no longer exists, or is unable, as determined by the district, to comply with the requirements of this section, "operator" means any person who owns or who has

owned the solid waste disposal site.

(4) "Perimeter" means the outer boundary of the entire solid waste disposal site property.

(5) "Solid waste disposal site" means a place, location, tract of land, area, or premises in use, or which has been used, for the landfill disposal of solid waste, as defined in Section 66719 of the Government Code, or hazardous waste, as defined in Section 66714.8 of the Government Code, or both.

(6) "Specified air contaminants" means substances determined to be air contaminants by the state board in coordination with the districts. The state board and the districts shall consider determining the following compounds to be air contaminants for purposes of this paragraph: benzene, chloroethene, 1,2-dibromoethane, 1,2-dichloroethane benzyl chloride, chlorobenzene, dichlorobenzene, 1,1-dichloroethene, dichloromethane, formaldehyde, hydrogen sulfide, tetrachloroethylene, tetrachloromethane, toluene, 1,1,1-trichloroethane, trichloroethylene, trichloromethane, xylene, and any other substance deemed appropriate by the state board or a district.

SEC. 2. Section 13273.1 is added to the Water Code, to read:

13273.1. (a) Except as provided in subdivision (b), an operator of a solid waste disposal site may submit a solid waste assessment questionnaire to the appropriate regional board at least 24 months prior to the site's solid waste water quality assessment test due date as established pursuant to Section 13273. The regional board shall require the operator to submit any additional information, as needed, or require onsite verification of the solid waste assessment questionnaire data in order to render a decision pursuant to subdivision (c).

(b) Any solid waste disposal site which is larger than 50,000 cubic yards or is known or suspected to contain hazardous substances, other than household hazardous wastes, shall be prohibited from submitting a solid waste assessment questionnaire under this section.

(c) The regional board shall complete a thorough analysis of each solid waste assessment questionnaire submitted pursuant to this section by a date 18 months prior to the solid waste assessment test due date. Based upon this analysis, the regional board shall determine whether or not the site has discharged hazardous substances which will impact the beneficial uses of water. If the regional board determines that the site has not so discharged hazardous substances, the regional board shall notify the operator that the operator is not required to prepare a solid waste water quality assessment test pursuant to Section 13273.

(d) If the regional board does not make the determination specified in subdivision (c), the operator shall submit all, or a portion of, a solid waste water quality assessment test. The regional board shall notify the operator of this determination and indicate if all, or what portion of, a solid waste water quality assessment test shall be required. The operator shall submit the solid waste water quality

assessment test, or a portion thereof, by the date established pursuant to Section 13273.

(e) The state board shall develop a solid waste assessment questionnaire and guidelines for submittal no later than three months after the effective date of this statute adding this section. The questionnaire shall contain, but not be limited to, a characterization of the wastes, size of the site, age of the site, and other appropriate factors.

(f) Those operators of solid waste disposal sites listed by the state board pursuant to Section 13273 in Rank 3 and seeking an exemption under this section shall submit their solid waste assessment questionnaire no later than July 1, 1988. If the regional board does not make the determination specified in subdivision (c), the regional board shall require the operator to submit all, or a portion of, a solid waste water quality assessment test by July 1, 1990.

SEC. 3. Section 13273.2 is added to the Water Code, to read:

13273.2. Notwithstanding subdivision (b) of Section 13273.1, a regional board may reevaluate the status of any solid waste disposal site ranked pursuant to Section 13273, including those sites exempted pursuant to Section 13273.1, and may require the operator to submit or revise a solid waste water quality assessment test after July 1, 1989. The regional board shall give written notification to the operator that a solid waste assessment test is required and the due date. This section shall not require submittal of a solid waste water quality assessment test by a date earlier than established in accordance with Section 13273.

SEC. 4. Section 13273.3 is added to the Water Code, to read:

13273.3. As used in Sections 13273, 13273.1, and 13273.2, "operator" means a person who operates or manages, or who has operated or managed, the solid waste disposal site. If the operator of the solid waste disposal site no longer exists, or is unable, as determined by the regional board, to comply with the requirements of Section 13273, 13273.1, or 13273.2, "operator" means any person who owns or who has owned the solid waste disposal site.

SEC. 5. The sum of forty-nine thousand dollars ($49,000) is hereby appropriated from the General Fund to the State Water Resources Control Board for expenditure during the 1987–88 fiscal year for purposes of Section 13273.1 of the Water 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:

In order to better protect the public health and safety by providing a screening procedure for inactive solid waste disposal sites, it is necessary that this act take effect immediately.

CHAPTER 933

An act to amend Sections 25355.5 and 25356.1 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 25355.5 of the Health and Safety Code is amended to read:

25355.5. (a) Except as provided in subdivisions (b), (c), and (d), no money shall be expended from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund for removal or remedial actions on any site selected for inclusion on the list established pursuant to Section 25356, unless the department first takes both of the following actions:

(1) The department issues one of the following orders or enters into the following agreement:

(A) The department issues an order specifying a schedule for compliance or correction pursuant to Section 25187.

(B) The department issues an order establishing a schedule for removing or remedying the release of a hazardous substance at the site, or for correcting the conditions that threaten the release of a hazardous substance. The order shall include, but is not limited to, requiring specific dates by which necessary corrective actions shall be taken to remove the threat of a release, or dates by which the nature and extent of a release shall be determined and the site adequately characterized, a remedial action plan shall be prepared, the remedial action plan shall be submitted to the department for approval, and a removal or remedial action shall be completed.

(C) The department enters into an enforceable agreement with a potentially responsible party for the site which requires the party to take necessary corrective action to remove the threat of the release, or to determine the nature and extent of the release and adequately characterize the site, prepare a remedial action plan, and complete the necessary removal or remedial actions, as required in the approved remedial action plan.

(2) The department determines, in writing, that the potentially responsible party or parties for the hazardous substance release site have not complied with all of the terms of an order issued pursuant to subparagraph (A) or (B) of paragraph (1) or an agreement entered into pursuant to subparagraph (C) of paragraph (1). Before the department determines that a potentially responsible party is not in compliance with the order or agreement, the department shall give the potentially responsible party written notice of the proposed determination and an opportunity to correct the noncompliance or show why the order should be modified. After the department has

made the final determination that a potentially responsible party is not in compliance with the order or agreement, the department may expend money from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund for a removal or remedial action.

(b) Subdivision (a) does not apply, and money from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund shall be available, upon appropriation by the Legislature, for removal or remedial actions, if any of the following conditions apply:

(1) The department, after a reasonable effort, is unable to identify a potential responsible party for the hazardous substance release site.

(2) The department determines that immediate corrective action is necessary, as provided in Section 25354.

(3) The director determines that removal or remedial action at a site is necessary because there may be an imminent and substantial endangerment to the public health or welfare or to the environment.

(c) Notwithstanding subdivision (a), the department may expend funds, upon appropriation by the Legislature, from the Hazardous Substance Cleanup Fund or the Hazardous Substance Account to conduct activities necessary to verify that an uncontrolled release of hazardous substances has occurred at a suspected hazardous substance release site, to issue an order or enter into an enforceable agreement pursuant to paragraph (1) of subdivision (a), and to review, comment upon, and approve or disapprove remedial action plans submitted by potentially responsible parties subject to the orders or the enforceable agreement.

(d) Notwithstanding subdivision (a), the department may expend funds, upon appropriation by the Legislature, from the Hazardous Substance Cleanup Fund or the Hazardous Substance Account to provide for oversight of removal and remedial actions, or to provide the state's share of a removal or remedial action, if the site is also listed on the federal act (42 U.S.C. Sec. 9604(c)(3)).

(e) A responsible party who fails, as determined by the department in writing, to comply with an order issued pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a), or to comply with all of the terms of an enforceable agreement entered into pursuant to subparagraph (C) of paragraph (1) of subdivision (a), shall be deemed, for purposes of subdivision (b) of Section 25355, to have failed to take action properly and in a timely fashion with respect to a hazardous substance release or a threatened release.

SEC. 2. Section 25356.1 of the Health and Safety Code is amended to read:

25356.1. (a) Except as provided in subdivision (g), the department, or, if appropriate, the regional water quality control board shall prepare or approve remedial action plans for all sites listed pursuant to Section 25356.

(b) A potentially responsible party may request the department or the regional water quality control board, when appropriate, to prepare or approve a remedial action plan for any site not listed

pursuant to Section 25356 if the department or the State Water Resources Control Board determines that a removal or remedial action is required to respond to a release of a hazardous substance. The department or the state board shall respond to a request to prepare or approve a remedial action plan within 90 days of receipt. This subdivision does not affect the authority of any regional water quality control board to issue and enforce a cleanup and abatement order pursuant to Section 13304 of the Water Code or a cease and desist order pursuant to Section 13301 of the Water Code.

(c) All remedial action plans prepared or approved pursuant to this section shall be based upon Section 25350, Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Sec. 300.61 et seq.), and upon all of the following factors, to the extent that these factors are consistent with these federal regulations and do not require a less stringent level of cleanup than these federal regulations:

(1) Health and safety risks posed by the conditions at the site. When considering these risks, the department or the regional water quality control board shall consider scientific data and reports which may have a relationship to the site.

(2) The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources.

(3) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses. The department or regional water quality control board shall consider the extent to which remedial action measures are available which use, as a principal element, treatment that significantly reduces the volume, toxicity, or mobility of the hazardous substances, as opposed to remedial actions which do not use this treatment. The department or regional water quality control board shall not select remedial action measures which use offsite transport and disposal of untreated hazardous substances or contaminated materials if practical and cost-effective treatment technologies are available.

(4) Site specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(5) Cost effectiveness of alternative remedial action measures. In evaluating the cost effectiveness of proposed alternative remedial action measures, the department or regional water quality control board shall consider, to the extent possible, the total short-term and long-term costs of these actions and shall use, as a major factor, whether the deferral of a remedial action will result, or is likely to result, in a rapid increase in cost or in the hazard to public health or the environment posed by the site. Land disposal shall not be deemed the most cost-effective measure merely on the basis of lower short-term cost.

(6) The potential environmental impacts of alternative remedial action measures, including, but not limited to, land disposal of the untreated hazardous substances as opposed to treatment of the hazardous substances to remove or reduce its volume, toxicity, or mobility prior to disposal.

(d) A remedial action plan prepared or approved pursuant to this section shall include a statement of reasons setting forth the basis for the removal and remedial actions selected. The statement shall include an evaluation of each proposed alternative submitted to, or prepared by, the department or the regional water quality control board for a particular site. The statement shall also include an evaluation of the consistency of the removal and remedial actions proposed by the plan with the federal regulations and factors specified in subdivision (c) and shall set forth the reasons for rejection of alternative removal and remedial actions. The statement shall also include a nonbinding preliminary allocation of responsibility among all identifiable potentially responsible parties at a particular site, including those parties which may have been released, or may otherwise be immune, from liability pursuant to this chapter or any other provision of law. Before adopting a final remedial action plan, the department or the regional water quality control board shall prepare or approve a draft remedial action plan and shall do all of the following:

(1) Circulate the draft plan for at least 30 days for public comment.

(2) Notify affected local and state agencies of the removal and remedial actions proposed in the remedial action plan and publish a notice in a newspaper of general circulation in the area affected by the draft remedial action plan. The department or the regional water quality control board shall also post notices in the location where the proposed removal or remedial action would be located and shall notify, by direct mailing, the owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll.

(3) Hold one or more meetings with the lead and responsible agencies for the removal and remedial actions, the potentially responsible parties for the removal and remedial actions, and the interested public, to provide the public with the information which is necessary to address the issues which concern the public. The information to be provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the removal and remedial actions, and a description of the proposed removal and remedial actions.

(4) Comply with Section 25358.7.

(e) After complying with subdivision (d), the department or the regional water quality control board shall review and consider any public comments, and shall revise the draft plan, if appropriate. The department or the regional water quality control board shall then

issue the final remedial action plan.

(f) A potentially responsible party named in the final remedial action plan issued by the department or the regional water quality control board may seek judicial review of the final remedial action plan pursuant to Section 1085 of the Code of Civil Procedure within 30 days after the final plan is issued. The filing of a petition seeking judicial review of a final remedial action plan shall not stay any removal or remedial action specified in the final plan.

For purposes of judicial review, the court shall uphold the final remedial action plan if the plan is based upon substantial evidence available to the department or the regional water quality control board, as the case may be. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction, including, but not limited to, enjoining the expenditure of funds pursuant to paragraph (2) of subdivision (b) of Section 25385.6.

(g) (1) This section does not require the department or a regional water quality control board to prepare a remedial action plan if conditions present at a site present an imminent or substantial endangerment to the public health and safety or to the environment.

(2) A remedial action plan is not required pursuant to subdivision (a) if all of the following apply:

(A) The department, a regional water quality control board, or a responsible party takes a removal action at a site listed pursuant to Section 25356 to prevent, minimize, or mitigate damage that may otherwise result from a release or threatened release of a hazardous substance.

(B) The total cost of the removal action is less than two hundred fifty thousand dollars ($250,000).

(C) The department, after appropriate testing and analysis, determines that the removal action has adequately abated conditions at the site and the site may be removed from the list established pursuant to Section 25356.

(3) Paragraph (2) of this subdivision does not apply to a removal action paid from the Hazardous Substance Cleanup Fund.

(h) Article 2 (commencing with Section 13320), Article 3 (commencing with Section 13330), Article 5 (commencing with Section 13350), and Article 6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code apply to any action or failure to act by a regional water quality control board pursuant to this section.

SEC. 3. Section 25356.1 of the Health and Safety Code is amended to read:

25356.1. (a) Except as provided in subdivision (g), the department, or, if appropriate, the regional water quality control board shall prepare or approve remedial action plans for all sites listed pursuant to Section 25356.

(b) A potentially responsible party may request the department or the regional water quality control board, when appropriate, to prepare or approve a remedial action plan for any site not listed

pursuant to Section 25356 if the department or the State Water Resources Control Board determines that a removal or remedial action is required to respond to a release of a hazardous substance. The department or the state board shall respond to a request to prepare or approve a remedial action plan within 90 days of receipt. This subdivision does not affect the authority of any regional water quality control board to issue and enforce a cleanup and abatement order pursuant to Section 13304 of the Water Code or a cease and desist order pursuant to Section 13301 of the Water Code.

(c) All remedial action plans prepared or approved pursuant to this section shall be based upon Section 25350, Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Sec. 300.61 et seq.), and any amendments thereto, and upon all of the following factors, to the extent that these factors are consistent with these federal regulations and do not require a less stringent level of cleanup than these federal regulations:

(1) Health and safety risks posed by the conditions at the site. When considering these risks, the department or the regional water quality control board shall consider scientific data and reports which may have a relationship to the site.

(2) The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources.

(3) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses. The department or regional water quality control board shall consider the extent to which remedial action measures are available which use, as a principal element, treatment that significantly reduces the volume, toxicity, or mobility of the hazardous substances, as opposed to remedial actions which do not use this treatment. The department or regional water quality control board shall not select remedial action measures which use offsite transport and disposal of untreated hazardous substances or contaminated materials if practical and cost-effective treatment technologies are available.

(4) Site specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(5) Cost effectiveness of alternative remedial action measures. In evaluating the cost effectiveness of proposed alternative remedial action measures, the department or regional water quality control board shall consider, to the extent possible, the total short-term and long-term costs of these actions and shall use, as a major factor, whether the deferral of a remedial action will result, or is likely to result, in a rapid increase in cost or in the hazard to public health or the environment posed by the site. Land disposal shall not be deemed the most cost-effective measure merely on the basis of lower short-term cost.

(6) The potential environmental impacts of alternative remedial action measures, including, but not limited to, land disposal of the untreated hazardous substances as opposed to treatment of the hazardous substances to remove or reduce its volume, toxicity, or mobility prior to disposal.

(d) A remedial action plan prepared or approved pursuant to this section shall include a statement of reasons setting forth the basis for the removal and remedial actions selected. The statement shall include an evaluation of each proposed alternative submitted to, or prepared by, the department or the regional water quality control board for a particular site. The statement shall also include an evaluation of the consistency of the removal and remedial actions proposed by the plan with the federal regulations and factors specified in subdivision (c) and shall set forth the reasons for rejection of alternative removal and remedial actions. The statement shall also include a nonbinding preliminary allocation of responsibility among all identifiable potentially responsible parties at a particular site, including those parties which may have been released, or may otherwise be immune, from liability pursuant to this chapter or any other provision of law. Before adopting a final remedial action plan, the department or the regional water quality control board shall prepare or approve a draft remedial action plan and shall do all of the following:

(1) Circulate the draft plan for at least 30 days for public comment.

(2) Notify affected local and state agencies of the removal and remedial actions proposed in the remedial action plan and publish a notice in a newspaper of general circulation in the area affected by the draft remedial action plan. The department or the regional water quality control board shall also post notices in the location where the proposed removal or remedial action would be located and shall notify, by direct mailing, the owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll.

(3) Hold one or more meetings with the lead and responsible agencies for the removal and remedial actions, the potentially responsible parties for the removal and remedial actions, and the interested public, to provide the public with the information which is necessary to address the issues which concern the public. The information to be provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the removal and remedial actions, and a description of the proposed removal and remedial actions.

(4) Comply with Section 25358.7.

(e) After complying with subdivision (d), the department or the regional water quality control board shall review and consider any public comments, and shall revise the draft plan, if appropriate. The department or the regional water quality control board shall then

issue the final remedial action plan.

(f) A potentially responsible party named in the final remedial action plan issued by the department or the regional water quality control board may seek judicial review of the final remedial action plan pursuant to Section 1085 of the Code of Civil Procedure within 30 days after the final plan is issued. The filing of a petition seeking judicial review of a final remedial action plan shall not stay any removal or remedial action specified in the final plan.

For purposes of judicial review, the court shall uphold the final remedial action plan if the plan is based upon substantial evidence available to the department or the regional water quality control board, as the case may be. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction, including, but not limited to, enjoining the expenditure of funds pursuant to paragraph (2) of subdivision (b) of Section 25385.6.

(g) (1) This section does not require the department or a regional water quality control board to prepare a remedial action plan if conditions present at a site present an imminent or substantial endangerment to the public health and safety or to the environment.

(2) A remedial action plan is not required pursuant to subdivision (a) if all of the following apply:

(A) The department, a regional water quality control board, or a responsible party takes a removal action at a site listed pursuant to Section 25356 to prevent, minimize, or mitigate damage that may otherwise result from a release or threatened release of a hazardous substance.

(B) The total cost of the removal action is less than two hundred fifty thousand dollars ($250,000).

(C) The department, after appropriate testing and analysis, determines that the removal action has adequately abated conditions at the site and the site may be removed from the list established pursuant to Section 25356.

(3) Paragraph (2) of this subdivision does not apply to a removal action paid from the Hazardous Substance Cleanup Fund.

(h) Article 2 (commencing with Section 13320), Article 3 (commencing with Section 13330), Article 5 (commencing with Section 13350), and Article 6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code apply to any action or failure to act by a regional water quality control board pursuant to this section.

SEC. 4. Section 3 of this bill incorporates amendments to Section 25356.1 of the Health and Safety Code proposed by both this bill and AB 1191. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 25356.1 of the Health and Safety Code, and (3) this bill is enacted after AB 1191, in which case Section 2 of this bill shall not become operative.

CHAPTER 934

An act to amend Sections 2456, 2457, and 3535 of, and to add Sections 2456.1, 2456.2, and 2456.3 to, the Business and Professions Code, relating to osteopathic physicians and surgeons and making an appropriation therefor.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 2456 of the Business and Professions Code is amended to read:

2456. (a) Each person holding a certificate issued by the Board of Osteopathic Examiners residing in or out of California shall pay to the secretary-treasurer of the board an annual tax and registration fee.

(b) Fictitious name permits issued by the Board of Osteopathic Examiners as provided in Section 2415 shall expire on December 31st of each year. The initial permit fee shall not exceed one hundred dollars ($100) and the renewal permit fee shall not exceed one hundred dollars ($100).

SEC. 2. Section 2456.1 is added to the Business and Professions Code, to read:

2456.1. All osteopathic physician's and surgeon's certificates shall expire 12 midnight on the last day of the birth month of the licensee.

The board shall establish by regulation procedures for the administration of a birth date renewal program, including, but not limited to, the establishment of a system of staggered license expiration dates such that a relatively equal number of licenses expire monthly.

To renew an unexpired license, the licensee shall, on or before the dates on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the prescribed renewal fee.

SEC. 3. Section 2456.2 is added to the Business and Professions Code, to read:

2456.2. (a) The board shall notify in writing by certified mail, return receipt requested, any physician and surgeon who does not renew his or her license within 60 days from its date of expiration.

(b) Any licensee who does not renew his or her expired license on or before its date of expiration shall pay all the following fees:

(1) The renewal fee in effect at the time of renewal.

(2) The delinquency fee required by Section 2455.

(c) Notwithstanding any other provision of law, the renewal of any expired physician's and surgeon's license within six months from its date of expiration shall be retroactive to the date of expiration of that license.

SEC. 4. Section 2456.3 is added to the Business and Professions

Code, to read:

2456.3. Except as provided in Section 2429, a license which has expired may be renewed at any time within five years after its expiration by filing an application for renewal on a form prescribed by the board and payment of all accrued renewal fees and any other fees required by Section 2455. Except as provided in Section 2456.2, renewal under this section shall be effective on the date on which the renewal application is filed, on the date on which the renewal fee or accrued renewal fees are paid, or on the date on which the delinquency fee or the delinquency fee and penalty fee, if any, are paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date set forth in Section 2456.1 which next occurs after the effective date of the renewal.

SEC. 5. Section 2457 of the Business and Professions Code is amended to read:

2457. The failure of any person holding a certificate issued by the Board of Osteopathic Examiners to pay the annual tax and registration fee during the time his or her certificate remains in force, shall automatically work a forfeiture of his or her certificate after a period of 60 days from the date of expiration.

The certificate shall not be restored except upon written application and the payment to the Board of Osteopathic Examiners of the fee provided by this article. No examination shall be required for the reissuance of a certificate that was forfeited under the provisions of this section.

SEC. 6. Section 3535 of the Business and Professions Code is amended to read:

3535. Notwithstanding any provision of law, physicians and surgeons licensed by the Board of Osteopathic Examiners may employ physician's assistants provided:

(a) Each physician's assistant so employed is a graduate of an approved program and is certified by the Physician's Assistant Examining Committee.

(b) The scope of practice of the physician's assistant shall be the same as that which is approved by the Division of Allied Health Professions of the Board of Medical Quality Assurance for physicians and surgeons supervising physician's assistants in the same or a similar specialty.

(c) The supervising physician is approved by the Board of Osteopathic Examiners. The Board of Osteopathic Examiners may deny an application, or suspend or revoke or impose probationary conditions upon any osteopathic physician and surgeons approved to supervise any physician's assistant in any decision made after a hearing as provided in Section 3528.

(d) Any physician's assistant certified by the committee shall be eligible for employment by any physician approved by the Board of Osteopathic Examiners; except that no physician shall supervise more than two physician's assistants. The Board of Osteopathic Examiners may restrict physicians to supervising specific types of

physician's assistants including, but not limited to, restricting physicians from supervising physician's assistants outside of the physician's field of specialty.

(e) Each physician desiring to supervise a physician's assistant under this section shall file a separate application. The fees to be paid to the Board of Osteopathic Examiners for approval to supervise a physician's assistant are to be set as follows: An application fee not to exceed fifty dollars ($50) shall be charged to each physician applicant. An approval fee not to exceed one hundred dollars ($100) shall be charged to each physician upon approval of an application to supervise a physician's assistant. If the approval will expire less than one year after its issuance, the fee shall be 50 percent of the initial approval fee currently in effect. The Board of Osteopathic Examiners shall renew approval to supervise physician's assistants upon application for that renewal. A biennial renewal fee not to exceed one hundred fifty dollars ($150) shall be paid for the renewal of that approval. The delinquency fee is twenty-five dollars ($25). The duplicate certificate fee is ten dollars ($10). The fees collected by the Board of Osteopathic Examiners pursuant to this subdivision shall be deposited in the Board of Osteopathic Examiners Contingent Fund.

(f) Any person who violates subdivision (a), (b), (c), or (d) of this section shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000) or by both.

CHAPTER 935

An act to amend Section 33433 of, and to add Section 33013 to, the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 33013 is added to the Health and Safety Code, to read:

33013. "Small housing project" means real property containing or proposed to contain a separate residential structure having not more than four dwelling units and which is owned by an agency and proposed to be conveyed to persons and families of low or moderate income or to private parties pursuant to an agreement with an agency to develop or maintain the residential structure which is proposed to be restricted by a recorded instrument for the use and occupancy of persons and families of low or moderate income for a period of not less than 30 years, or to the term otherwise provided by law, and which meets either of the following criteria:

(a) The real property is owned by an agency and one or more of the dwelling units therein are proposed to be restricted for the use and occupancy of persons or families to whom the agency is obligated to provide relocation assistance under Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code or for persons and families of low or moderate income.

(b) The real property is owned by the agency and is proposed to be conveyed to persons and families of low or moderate income or developed for rental by private parties (nonprofit or otherwise) pursuant to an agreement with the redevelopment agency.

SEC. 2. Section 33433 of the Health and Safety Code is amended to read:

33433. (a) Except as provided in subdivision (c), before any property of the agency acquired in whole or in part, directly or indirectly, with tax increment moneys is sold or leased for development pursuant to the redevelopment plan, the sale or lease shall first be approved by the legislative body after public hearing. Notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community for at least two successive weeks prior to the hearing.

The agency shall make available for public inspection and copying at a cost not to exceed the cost of duplication:

(1) A copy of the proposed sale or lease.

(2) A summary which describes and specifies all of the following:

(A) The cost of the agreement to the agency, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the agency, plus the expected interest on any loans or bonds to finance the agreements.

(B) The estimated value of the interest to be conveyed or leased, determined at the highest uses permitted under the plan.

(C) The purchase price or sum of the lease payments which the lessor will be required to make during the term of the lease. If the sale price or total rental amount is less than the fair market value of the interest to be conveyed or leased, determined at the highest and best use consistent with the redevelopment plan, then the agency shall provide as part of the summary an explanation of the reasons for the difference.

(b) The report shall be made available to the public no later than the time of publication of the first notice of the hearing mandated by this section. The resolution approving the lease or sale shall be adopted by a majority vote unless the legislative body has provided by ordinance for a two-thirds vote for that purpose and shall contain findings that the consideration is not less than fair market value in accordance with covenants and conditions governing the sale or lease or, with respect to any sale or lease at less than estimated value, determined at the highest use permitted under the plan, that the lesser consideration is necessary to effectuate the purposes of the plan.

(c) At the election of the legislative body, subdivisions (a) and (b)

shall not apply to the sale or lease of a small housing project, as defined by Section 33013. If the legislative body so elects, the agency shall, instead, hold a public hearing in conformity with the requirements of subdivision (a) and shall also report the sale or lease to the legislative body on or before 30 days after the end of the agency's fiscal year during which the sale or lease occurred. The report shall disclose the name of the buyer, the legal description or street address of the property, the date of the sale or lease, the consideration for which the property was sold or leased by the agency to the buyer or lessee, and the date on which the agency held its public hearing for the sale or lease pursuant to Section 33431.

As used in this subdivision and Section 33413, "persons and families of low or moderate income" has the same meaning as defined by Section 50093.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 2 of Title 2 of the Government Code.

CHAPTER 936

An act to amend Sections 82030, 86106, and 86107 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987]

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

SECTION 1. Section 82030 of the Government Code is amended to read:

82030. (a) "Income" means, except as provided in subdivision (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. "Income," other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business

within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.

(b) "Income" also does not include:

(1) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100).

(2) Salary and reimbursement for expenses or per diem received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic, or charitable organization.

(3) Any devise or inheritance.

(4) Interest, dividends, or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency.

(5) Dividends, interest, or any other return on a security which is registered with the Securities and Exchange Commission of the United States government or a commodity future registered with the Commodity Futures Trading Commission of the United States government, except proceeds from the sale of these securities and commodities futures.

(6) Redemption of a mutual fund.

(7) Alimony or child support payments.

(8) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status if:

(A) Used to purchase, refinance the purchase of, or for improvements to, the principal residence of filer; or

(B) The balance owed does not exceed ten thousand dollars ($10,000).

(9) Any loan from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, or first cousin, or the spouse of any such person, provided that a loan from any such person shall be considered income if the lender is acting as an agent or intermediary for any person not covered by this paragraph.

(10) Any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to official status, so long as the balance owed to the creditor does not exceed ten thousand dollars ($10,000).

(11) Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a).

(12) Proceeds from the sale of securities registered with the Securities and Exchange Commission of the United States government or from the sale of commodities futures registered with the Commodity Futures Trading Commission of the United States

government if the filer sells the securities or the commodities futures on a stock or commodities exchange and does not know or have reason to know the identity of the purchaser.

SEC. 2. Section 86106 of the Government Code is amended to read:

86106. Within 20 days after the opening of each regular session of the Legislature, each registered lobbying firm and lobbyist employer which will be conducting activities which require registration shall renew its registration by filing photographs of its lobbyists, authorizations, and a registration statement. Each lobbyist shall renew his or her lobbyist certification in connection with the renewal of registration by the lobbyist's lobbying firm or employer.

SEC. 3. Section 86107 of the Government Code is amended to read:

86107. (a) If any change occurs in any of the information contained in a registration statement, an appropriate amendment shall be filed with the Secretary of State within 20 days after the change. However, if the change includes the name of a person by whom a lobbying firm is retained, the registration statement of the lobbying firm shall be amended and filed to show that change prior to the lobbying firm's attempting to influence any legislative or administrative action on behalf of that person. Lobbying firms and lobbyist employers which, during a regular session of the Legislature, cease all activity which required registration shall file a notice of termination within 20 days after such cessation. Lobbying firms and lobbyist employers which at the close of a regular session of the Legislature cease all activity which required registration, shall not be required to file a notice of termination.

(b) If any change occurs in any of the information contained in a lobbyist certification or if the lobbyist terminates all activity which required the certification, the lobbyist shall submit an amended certification or notice of termination to his or her lobbying firm or lobbyist employer for filing with the Secretary of State within the time limits specified in subdivision (a). A lobbyist who at the close of a regular session of the Legislature ceases all activity which required certification, shall not be required to file a notice of termination.

(c) Lobbyists and lobbying firms shall remain subject to Section 86203 for the earlier of six months after filing a notice of termination or six months after the close of a regular session of the Legislature at the close of which the lobbyist or lobbying firm ceased all activity which required certification or registration.

SEC. 4. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 937

An act to amend Section 8230 of, and to add Section 2762.2 to, the Fish and Game Code, relating to fish.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 2762.2 is added to the Fish and Game Code, to read:

2762.2. The department may advance partial finding, of up to 50 percent of the amount contracted for, to contractors for projects under subdivision (b) of Section 2762 if the director finds the organization meets all of the following requirements:

(1) It has a previously demonstrated record of successfully completing one or more fishery restoration projects funded under contract with the department.

(2) It utilizes generally accepted accounting procedures.

(3) It demonstrates that the project can be accomplished more efficiently and economically with partial funding advanced at the initiation of the project.

SEC. 2. Section 8230 of the Fish and Game Code is amended to read:

8230. (a) 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, the number and types of vessels being used, and the commensurate 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.

(b) The Legislature further finds and declares the following:

(1) The system for allocating commercial salmon vessel permits enacted in this article is an interim system created in response to the urgent need to protect the salmon resource in California waters while inflicting the least hardship on the people of the state.

(2) The Legislature shall, on or before January 1, 1989, enact a permanent system to regulate entry into the commercial salmon fishery which will continue to be equitable and provide for new entry.

(3) In order to devise a permanent system to regulate entry into the commercial salmon fishery, the Legislature shall continue to collect information on the salmon fishery from the department with the assistance of the Joint Committee on Fisheries and Aquaculture. This information shall include the impact that equipment and experience have on the fishery and the burden placed on the fishery by commercial salmon fishermen.

(4) A report containing the requested information shall be prepared by the department with the assistance of the committee and transmitted to the Legislature on or before January 1, 1987.

CHAPTER 938

An act to amend Section 31470.11 of, and to add Section 31470.12 to, the Government Code, relating to the County Employees Retirement Law of 1937.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 31470.11 of the Government Code is amended to read:

31470.11. Notwithstanding Section 31470.2, all welfare fraud and child support investigators and administrators in counties of the 16th class, as described by Sections 28020 and 28037, as amended by Chapter 1204 of the Statutes of 1971, are ineligible for safety membership, except as provided in Section 31470.12.

SEC. 2. Section 31470.12 is added to the Government Code, to read:

31470.12. Notwithstanding Section 31470.11, child support investigators and administrators in counties of the 16th class, as described by Section 28020 and 28037, as amended by Chapter 1204 of the Statutes of 1971, are eligible.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 939

An act to amend Section 1170.1 of the Penal Code, relating to sentencing.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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 these convictions shall be the sum of the principal term, the subordinate term and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. 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, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, or 12022.9, and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. 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, 12022.4, 12022.5, 12022.7, or 12022.9.

(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, 12022.4, 12022.5, 12022.7, or 12022.9. 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 the 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 the convictions which the 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, 667.5, 12022, 12022.4, 12022.5, 12022.6, 12022.7, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor 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, 12022.4, 12022.5, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 12022, 12022.1, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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 667, 12022, 12022.4, 12022.5, 12022.6, 12022.7, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she 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, 12022.4, 12022.5, 12022.6, 12022.7, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person 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. 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 these convictions shall be the sum of the principal term, the subordinate term and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. 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, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.1 or 11379.8 of the Health and Safety Code. 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, 12022.4, 12022.5, 12022.7, 12022.75, or 12022.9.

(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, 12022.4, 12022.5, 12022.7, 12022.75, or 12022.9. 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 the 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 the convictions which the 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, 667.5, 12022, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor 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, 12022.4, 12022.5, 12022.7, and 12022.9 may be imposed for any single

offense, only the greatest enhancement shall apply; however, in cases of penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 12022, 12022.1, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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 667, 12022, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she 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, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person 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. 3. 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 these convictions shall be the sum of the principal term, the subordinate term and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. 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 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. 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 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.7, or 12022.9.

(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 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.7, or 12022.9. 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 the 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 the convictions which the 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, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.6, 12022.7, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor 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, 12022.4, 12022.5, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, and 12022.9 and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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 (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.6, 12022.7, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she 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, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.6, 12022.7, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person 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. 4. 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 these convictions shall be the sum of the principal term, the subordinate term and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. 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, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. 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) or (9) 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, 12022.4, 12022.5, 12022.7, or 12022.9.

(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, 12022.4, 12022.5, 12022.7, or 12022.9. 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 the 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 the convictions which the 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, 667.5, 12022, 12022.4, 12022.5, 12022.6, 12022.7, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor 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, 12022.4, 12022.5, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 12022, 12022.1, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, and 12022.9 and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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 667, 12022, 12022.4, 12022.5, 12022.6, 12022.7, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she 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, 12022.4, 12022.5, 12022.6, 12022.7, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person 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. 5. 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 these convictions shall be the sum of the principal term, the subordinate term and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. 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 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.1 or 11379.8 of the Health and Safety Code. 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 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.7, 12022.75, or 12022.9.

(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 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.7, 12022.75, or 12022.9. 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 the 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 the convictions which the 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, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor 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, 12022.4, 12022.5, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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 (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she 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, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person 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. 6. 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 these convictions shall be the sum of the principal term, the subordinate term and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. 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, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.1 or 11379.8 of the Health and Safety Code. 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) or (9) 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, 12022.4, 12022.5, 12022.7, 12022.75, or 12022.9.

(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, 12022.4, 12022.5, 12022.7, 12022.75, or 12022.9. 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 the 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 the convictions which the 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, 667.5, 12022, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor 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, 12022.4, 12022.5, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 12022, 12022.1, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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 667, 12022, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she 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, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person 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. 7. 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 these convictions shall be the sum of the principal term, the subordinate term and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. 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 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. 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) or (9) 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 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.7, or 12022.9.

(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 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.7, or 12022.9. 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 the 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 the convictions which the 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, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.6, 12022.7, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor 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, 12022.4, 12022.5, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, and 12022.9 and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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 (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.6, 12022.7, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she 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, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.6, 12022.7, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person 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. 8. 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 these convictions shall be the sum of the principal term, the subordinate term and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. 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 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.1 or 11379.8 of the Health and Safety Code. 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) or (9) 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 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.7, 12022.75, or 12022.9.

(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 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.7, 12022.75, or 12022.9. 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 the 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 the convictions which the 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, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor 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, 12022.4, 12022.5, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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 (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she 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, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, 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, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person 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. 9. (a) Section 2 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and AB 1152. It shall only become operative if (1) both bills are enacted and become effective January 1, 1988, (2) each bill amends Section 1170.1 of the Penal Code, and (3) AB 1578 is not enacted or as enacted does not amend that section, (4) AB 1559 is not enacted or as enacted does not amend that section and (5) this bill is enacted after AB 1152, in which case Sections 1, 3, 4, 5, 6, 7, and 8 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and AB 1578. It shall only become operative if (1) both bills are enacted and become effective January 1, 1988, (2) each bill amends Section 1170.1 of the Penal Code, and (3) AB 1152 is not enacted or as enacted does not amend that section, (4) AB 1559 is not enacted or as enacted does not amend that section and (5) this bill is enacted after AB 1578, in which case Sections 1, 2, 4, 5, 6, 7, and 8 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and AB 1559. It shall only become operative if (1) both bills are enacted and become effective January 1, 1988, (2) each bill amends Section 1170.1 of the Penal Code, and (3) AB 1152 is not enacted or as enacted does not amend that section, (4) AB 1578 is not enacted or as enacted does not amend that section and (5) this bill is enacted after AB 1559, in which case Sections 1, 2, 3, 5, 6, 7, and 8 of this bill shall not become operative.

(d) Section 5 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill, AB 1152, and AB 1578. It shall only become operative if (1) this bill, AB 1152, and AB 1578 are enacted and become effective January 1, 1988, (2) this bill, AB 1152, and AB 1578 amend Section 1170.1 of the Penal Code, and (3) AB 1559 is not enacted or as enacted does not amend that section, (4) this bill is enacted after AB 1152 and AB 1578, in which case Sections 1, 2, 3, 4, 6, 7, and 8 of this bill shall not become operative.

(e) Section 6 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill, AB 1152, and AB 1559. It shall only become operative if (1) this bill, AB 1152, and AB 1559 are enacted and become effective January 1, 1988, (2) this bill, AB 1152, and AB 1559 amend Section 1170.1 of the Penal Code, and (3) AB 1578 is not enacted or as enacted does not amend that section, (4) this bill is enacted after AB 1152 and AB 1559, in which case Sections 1, 2, 3, 4, 5, 7, and 8 of this bill shall not become operative.

(f) Section 7 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill, AB 1578, and AB 1559. It shall only become operative if (1) this bill, AB 1578, and AB 1559 are enacted and become effective January 1, 1988, (2) this bill, AB 1578, and AB 1559 amend Section 1170.1 of the Penal Code, and (3) AB 1152 is not enacted or as enacted does not amend that section,

(4) this bill is enacted after AB 1578 and AB 1559, in which case Sections 1, 2, 3, 4, 5, 6, and 8 of this bill shall not become operative.

(g) Section 8 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill, AB 1152, AB 1578, and AB 1559. It shall only become operative if (1) all four bills are enacted and become effective January 1, 1988, (2) all four bills amend Section 1170.1 of the Penal Code, (3) this bill is enacted after AB 1152, AB 1578, and AB 1559, in which case Sections 1, 2, 3, 4, 5, 6, and 7 of this bill shall not become operative.

CHAPTER 940

An act to amend Sections 224p and 224q of the Civil Code, relating to adoption.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 224p of the Civil Code is amended to read:

224p. (a) Any person who, or organization that, without holding a valid and unrevoked license or permit to place children for adoption issued by the State Department of Social Services, advertises in any periodical or newspaper, by radio, or other public medium, that he, she, or it will place children for adoption, or accept, supply, provide or obtain children for adoption, or that causes any advertisement to be published in or by any public medium soliciting, requesting, or asking for any child or children for adoption is guilty of a misdemeanor.

(b) Any person other than a parent who, or any organization, association, or corporation that, without holding a valid and unrevoked license or permit to place children for adoption issued by the State Department of Social Services, places any child for adoption is guilty of a misdemeanor.

SEC. 2. Section 224q of the Civil Code is amended to read:

224q. As used in this chapter, "place for adoption," in the case of an adoption to which neither the State Department of Social Services nor a licensed adoption agency is a party, means the selection of a prospective adoptive parent or parents for a minor child by the parent or parents. The selection shall be personally made by the parent or parents of the child and may not be delegated to an agent. The act of selection by the parent or parents shall be based upon his, her, or their personal knowledge of the prospective adoptive parent or parents. "Personal knowledge" includes, but is not limited to, substantially correct knowledge of all of the following regarding the prospective adoptive parents: their full legal name; age; religion; race or ethnicity; employment; whether other persons, whether

children and adults, reside in their home; any health conditions curtailing their normal daily activities or reducing their normal life expectancy; and their general area of residence, or upon request, their address. "Prospective adoptive parent" means a person who has filed or intends to file a petition to adopt a minor who has been or who is to be placed in his or her physical care.

CHAPTER 941

An act to amend Sections 21628, 21637, 21638, and 21647 of the Business and Professions Code, and to amend Section 21201 of the Financial Code, relating to secondhand dealers.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987]

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 Sections 21630 and 21633. The report shall be legible, prepared in English, completed where applicable, and include, but not limited to, the following information:

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

(b) The identification of the intended seller or pledgor. The identification of the seller or pledgor of the property shall be verified by the person taking the information. The verification shall be valid if the person taking the information reasonably relies on any one of the following documents, provided the document is currently valid or has been issued within five years and contains a photograph or description, or both, of the person named on it, is signed by the person, and bears a serial or other identifying number:

(1) A passport of the United States.

(2) A driver's license issued by any state, or Canada.

(3) An identification card issued by any state.

(4) An identification card issued by the United States.

(c) A complete and reasonably accurate description of serialized property, including, but not limited to, the following: serial number and other identifying marks or symbols, owner-applied numbers, manufacturer's named brand, and model name or number.

(d) A complete and reasonably accurate description of nonserialized property, including, but not limited to, the following: size, color, material, manufacturer's pattern name (when known), owner-applied numbers and personalized inscriptions and other identifying marks or symbols.

(e) A certification by the intended seller or pledgor that he or she is the owner of the property or has the authority of the owner to sell or pledge the property.

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

(g) A legible fingerprint taken from the intended seller or pledgor, as prescribed by the Department of Justice.

SEC. 2. Section 21637 of the Business and Professions Code is amended to read:

21637. Nothing herein contained shall be deemed to excuse compliance with the provisions of any city, county, or city and county ordinance or any other state law pertaining to or covering the reporting, holding, or releasing of tangible personal property, not inconsistent with the provisions of this article, except that no city, county, or city and county or any other state agency shall adopt the following:

(a) Holding, reporting, or identification requirements for transactions involving coins, monetized bullion, or commercial grade ingots of gold, silver, or other precious metals.

(b) Identification, holding, or reporting requirements for the acquisition of tangible personal property, in the ordinary course of business, by pawnbrokers and secondhand dealers, other than as set forth in Sections 21628, 21630, 21633, and 21636 of this code, and Section 21208 of the Financial Code.

SEC. 3. Section 21638 of the Business and Professions Code is amended to read:

21638. The provisions of this article shall not prohibit enactment, amendment, or enforcement by any city, county, or city and county of any local ordinance relating to a secondhand dealer which is not inconsistent with the provisions of this article, except that no city, county, or city and county, or any other state agency shall adopt the following:

(a) Holding, reporting, or identification requirements for transactions involving coins, monetized bullion, or commercial grade ingots of gold, silver, or other precious metals.

(b) Identification, holding, or reporting requirements for the acquisition of tangible personal property, in the ordinary course of business, by pawnbrokers and secondhand dealers, other than as set forth in Sections 21628, 21630, 21633, and 21636 of this code, and Section 21208 of the Financial Code.

SEC. 4. Section 21647 of the Business and Professions Code is amended to read:

21647. (a) Whenever any peace officer has probable cause to believe that property in the possession of a pawnbroker or

secondhand dealer is stolen, the peace officer may place a hold on the property for a period not to exceed 90 days. The peace officer shall give the pawnbroker or secondhand dealer a written notice at the time the hold is placed, describing the item or items to be held. During that period the pawnbroker or secondhand dealer shall not release or dispose of the property, except pursuant to a court order or upon receipt of a written authorization signed by any peace officer who is a member of the law enforcement agency of which the peace officer placing the hold on the property is a member. Except as specifically set forth in this section, a pawnbroker or secondhand property dealer shall not be subject to civil liability for compliance with this section.

(b) Whenever property that is in the possession of a pawnbroker or secondhand dealer is subject to a hold and the property is required by a peace officer in a criminal investigation, the pawnbroker or secondhand dealer, upon reasonable notice, shall produce the property at reasonable times and places upon the request of any peace officer who is a member of the law enforcement agency of which the peace officer placing the hold on the property is a member.

(c) Whenever property that is in the possession of a pawnbroker or secondhand dealer is subject to a hold and the property is no longer required for the purpose of criminal investigation, the law enforcement agency that placed the hold on the property shall undertake the following:

(1) With respect to the property being held, if the law enforcement agency has no knowledge of the property on hold being reported as stolen, the property shall be released.

(2) If the law enforcement agency has knowledge that the property has been reported stolen, the law enforcement agency shall notify the person who reported the stolen property of the name and address of the pawnbroker or secondhand dealer holding the property, authorize the release of the property to that person, and advise the person that the law neither requires nor prohibits payment of a fee or any other condition in return for the surrender of the property.

The law enforcement agency that placed the property on hold shall release the hold after 60 days has elapsed following the delivery of the notice to the person who reported the property stolen.

(3) If a pledgor seeks to redeem property that is subject to a hold, the pawnbroker or secondhand dealer shall advise the pledgor of the name and badge number of the peace officer who placed the hold on the property and the name of the law enforcement agency of which the officer is a member. If the property is not required to be held pursuant to a criminal prosecution the hold shall be released.

SEC. 5. Section 21201 of the Financial Code is amended to read:

21201. Every loan made by a pawnbroker for which goods are received in pledge as security shall be evidenced by a written contract a copy of which shall be furnished to the borrower. The loan

contract shall set forth the loan period and the date on which the loan is due and payable, and shall clearly inform the borrower of his or her right to redeem the pledge during the redemption period.

Every pawnbroker shall retain in his or her possession, after the date on which the loan became due and payable, every article pledged to him or her for a period of four months. During such periods the borrower may redeem the articles upon payment of the applicable charges.

If any pledged article is not redeemed during the four-month redemption period as provided herein, and the borrower and pawnbroker do not mutually agree in writing to extend the redemption period, the pawnbroker shall notify the borrower within 30 days after expiration of the redemption period. The pawnbroker shall notify the borrower either by registered mail, or by certified mail, or by regular mail for which a certificate of mailing is issued by the United States Postal Service addressed to his or her last known address of the termination of the redemption period, and extending the right of redemption for a period of 10 days from date of mailing of such notice.

However, the posted schedule of charges required pursuant to Section 21200.5 shall contain a notice informing the borrower that if he or she desires, the pawnbroker shall send the notice of termination of the redemption period by registered or certified mail with return receipt requested, upon prepayment of the mailing costs. The schedule of charges shall contain the notice no later than January 1, 1986. If any pledged article is not redeemed within the 10-day period, the pawnbroker shall become vested with all right, title, and interest of the pledgor, or his or her assigns, to the pledged article, to hold and dispose of as his or her own property. Any other provision of law relating to the foreclosure and sale of pledges shall not be applicable to any pledge the title to which is transferred in accordance with this section. The pawnbroker shall not sell any article of pledged property until he or she has become vested with the title to that property pursuant to this section. The sale of pledged property is a misdemeanor pursuant to Section 21209.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 942

An act to add Section 48915.1 to the Education Code, relating to education.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. The Legislature finds and declares that a pupil who is expelled from a school district for the serious offenses specified in Section 48915 of the Education Code may enroll, through subterfuge or the failure of communication between school districts, in a school in another school district in the state.

The Legislature finds and declares that the presence of these pupils in any other school during the period of the expulsion represents a possible danger to pupils or employees of the district and that school districts should not evade the responsibility of prohibiting these pupils from enrolling at a school in their school district.

The Legislature finds and declares that the law is silent regarding the responsibilities of a school district with respect to enrolling a pupil during the period of his or her expulsion from another school district if the pupil has satisfied the residency requirements of the enrolling district.

SEC. 2. Section 48915.1 is added to the Education Code, to read:

48915.1. (a) The governing board of a school district may make a determination to deny enrollment to an individual who has been expelled from another school district for acts described in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 48915, for the remainder of the expulsion period after a determination has been made, through a hearing, that the individual poses a potential danger to either the pupils or employees of the school district.

(b) Notwithstanding any other provision of law, the governing board of a school district, after a determination has been made, through a hearing, that an individual expelled from another school district for the acts described in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 48915 does not pose a danger to either the pupils or employees of the school district, shall permit the individual to enroll in a school in the school district during the term of the expulsion, provided that he or she, subsequent to the expulsion, either has established legal residence in the school district, pursuant to Section 48200, or has enrolled in the school pursuant to an interdistrict agreement executed between the affected school districts.

(c) The governing board of a school district, having received a request from an individual, who has been expelled from another school district for an act described in paragraphs (1) to (4), inclusive,

of subdivision (a) of Section 48915, for enrollment in a school maintained by the school district shall hold a hearing to determine whether that individual poses a continuing danger either to the pupils or employees of the school district. The hearing and notice shall be conducted according to the rules and regulations governing procedures for the expulsion of pupils as described in Section 48918 of the Education Code. If a school district requests information regarding the expulsion of an applicant for enrollment, the school district receiving the request shall respond to it within five working days from the date of receipt.

(d) The governing board of a school district, when making its determination whether to enroll an individual who has been expelled from another school district for these acts, may consider the following options:

(1) Deny enrollment.

(2) Permit enrollment.

(3) Permit conditional enrollment in a regular school program or another educational program.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 943

An act to amend Section 16731 of, to amend and repeal Sections 53531, 53532, and 53541 of, and to repeal and add Chapter 11.8 (commencing with Section 8869.80) of Division 1 of Title 2 of, the Government Code, and to amend Section 50191 of the Health and Safety Code, relating to bonds.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Chapter 11.8 (commencing with Section 8869.80) of Division 1 of Title 2 of the Government Code is repealed.

SEC. 2. Chapter 11.8 (commencing with Section 8869.80) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 11.8. CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

8869.80. The Legislature hereby finds and declares that the Tax Reform Act of 1986 (Public Law 99-514) establishes a unified volume ceiling on the aggregate amount of private activity bonds which can be issued in each state. The unified volume ceiling is the product of seventy-five dollars ($75) multiplied by the state population in 1987 and fifty dollars ($50) multiplied by the state population in each succeeding calendar year.

The Legislature further finds and declares that the federal act requires each state to allocate its volume ceiling according to a specified formula unless a different procedure is established by Governor's proclamation or state legislation.

The Legislature further finds and declares that the Governor issued a proclamation on September 30, 1986, altering the allocation formula described in the act by centralizing the allocation process in the California Debt Limit Allocation Committee.

The Legislature further finds and declares that the federal act terminates the authority of a Governor's proclamation on December 31, 1987.

The Legislature, therefore, finds and declares that it is necessary to designate a state agency and create an allocation system to administer the state unified volume ceiling.

The Legislature further finds and declares that a substantial public benefit is served by promoting housing for lower income families and individuals.

The Legislature further finds and declares that a substantial public benefit is served by preserving and rehabilitating existing governmental assisted housing for lower income families and individuals.

8869.81. This chapter is enacted to implement the state unified volume limit established in Section 1301 of the Federal Tax Reform Act of 1986 (Public Law 99-514) and Section 146 of the Internal Revenue Code.

8869.82. As used in this chapter, unless the context otherwise requires, the terms defined in this section shall have the following meanings:

(a) "Committee" means the California Debt Limit Allocation Committee established pursuant to Section 8869.83.

(b) "Fund" means the California Debt Limit Allocation Committee Fund created pursuant to Section 8869.90.

(c) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time.

(d) "Issuer" means any local agency or state agency authorized by the Constitution or laws of the state to issue private activity bonds.

(e) "Local agency" means any political subdivision of the state within the meaning of Section 103 of the Internal Revenue Code, or any entity that has the power to issue private activity bonds "on

behalf of" any such political subdivision.

(f) "MBAC" means the Mortgage Bond Allocation Committee created by Section 50185 of the Health and Safety Code.

(g) "Private activity bond" means a part or all of any bond (or other instrument) required to obtain a portion of the state's volume cap pursuant to Section 146 of the Internal Revenue Code in order to be tax exempt, including generally the following (as such bonds are defined in the Internal Revenue Code): (1) exempt facility bonds (except bonds for airports, docks and wharves, and certain solid waste facilities), (2) qualified mortgage bonds, (3) qualified small issue bonds, (4) qualified student loan bonds, (5) qualified redevelopment bonds, and (6) the nonqualified amount of an issue of governmental bonds (including advance refunds) exceeding fifteen million dollars ($15,000,000), as provided in Section 141(b)(5) of the Internal Revenue Code.

(h) "Private activity bond limit" means any portion of the state ceiling allocated or transferred to a state agency or local agency pursuant to this chapter.

(i) "State" means the State of California.

(j) "State agency" means the state and all state entities, including joint powers authorities of which the state or agency or instrumentality thereof is a member, empowered to issue private activity bonds, the interest on which is exempt from income tax under Section 103(a) of the Internal Revenue Code, including nonprofit corporations described in Section 150(d) of the Internal Revenue Code authorized to issue qualified scholarship funding bonds.

(k) "State ceiling" shall be the amount specified by Section 146(d) of the Internal Revenue Code for each calendar year commencing in 1986.

Pursuant to Section 146(e) of the Internal Revenue Code, this chapter shall govern the allocation of the state ceiling among the state agencies and local agencies in this state having authority to issue private activity bonds. Any portion of the state ceiling allocated or transferred by or under the authority of this chapter shall become the private activity bond limit for the issuer of which such portion is allocated or transferred for any private activity bonds issued by that issuer.

8869.83. (a) There is in state government the California Debt Limit Allocation Committee, consisting of three members as follows:

(1) The Treasurer, or his or her designee.

(2) The Controller, or his or her designee.

(3) The Governor, or his or her designee.

(b) The Treasurer shall serve as chairperson of the committee and the office of the Treasurer shall provide any administrative assistance and support staff which is needed for the committee to operate. The chairperson shall keep, or cause to be kept, minutes and other records and documents of the committee.

(c) Members of the committee shall serve without compensation.

(d) Two members of the committee shall constitute a quorum. The affirmative vote of two members of the committee shall be necessary for any action taken by the committee. However, the committee may, by unanimous vote, delegate to its chairperson the authority to carry out any acts empowered to it under this chapter.

8869.84. (a) The committee shall, as soon as is practicable after the start of each calendar year, determine and announce the state ceiling for the calendar year.

(b) The entire state ceiling for each calendar year is hereby allocated to the committee to further allocate to state and local agencies as provided in this chapter.

(c) The committee shall prepare application forms and announce procedures for receipt and review of applications from state and local agencies desiring to issue private activity bonds.

(d) The committee may at any time, before or after granting any allocations in any calendar year to any state agencies or local agencies, announce priorities or reservations of any part of the state ceiling not theretofore allocated either for certain categories of bonds or categories of issuers.

(e) The committee may require any issuer making an application to the committee or MBAC for allocation of a portion of the state ceiling to make a deposit, as determined by the committee, of up to 1 percent of the portion requested. If an allocation is not given, the deposit shall be returned. If an allocation is given, the deposit shall be kept (in proportion to the amount of allocation given) until bonds are issued. Upon that issuance, the deposit shall be returned to the issuer in an amount equal to the product of (1) the amount of the deposit retained times (2) the ratio between the amount of bonds issued divided by the amount of allocation granted. If no bonds are issued prior to the expiration of the allocation, the deposit shall be kept, unless the committee determines there is good cause to return all or part of the deposit. Any portion of a deposit kept shall be deposited in the fund.

(f) The committee may transfer part of the state ceiling to the MBAC, to be used for qualified mortgage bonds and exempt facility bonds, as those terms are used in the Internal Revenue Code, for qualified residential rental projects, as those terms are used in the Internal Revenue Code, (together referred to as "housing bonds"), with directions and conditions pursuant to which MBAC may allocate those amounts to issuers of housing bonds at both the state and local level. In carrying out these functions, MBAC shall act solely as directed or authorized by the committee. If the committee makes the transfer to MBAC authorized by this subdivision, the references in Sections 8869.85, 8869.86, 8869.87, and 8869.88 to the "committee" shall, for purposes of any housing bonds, be deemed to mean MBAC.

8869.85. (a) Each state agency shall apply to the committee for allocation of a portion of the state ceiling, supplying any information which the committee may require. The application may be for a specific project, or it may be for a designated dollar amount, to be

utilized for projects or programs at the discretion of the state agency. No private activity bonds issued by any state agency shall be deemed to receive the benefit of any portion of the state ceiling unless the committee has allocated or permitted the transfer of a portion of the state ceiling to the state agency. The allocation may be on any terms and conditions as the committee may determine.

(b) Any local agency may apply to the committee for an allocation of a portion of the state ceiling, supplying any information which the committee may require. Applications from local agencies may only be for specific projects or programs. No private activity bond issued by a local agency shall be deemed to receive the benefit of any portion of the state ceiling unless the committee has allocated or permitted the transfer of a portion of the state ceiling to the local agency. The allocation may be upon any terms and conditions as the committee may determine.

(c) Any allocation made pursuant to this section shall be irrevocable upon issuance of bonds pursuant thereto at least to the extent of the amount of the bonds so issued. No allocation shall permit the state agency or local agency which receives it to use all or any portion of the allocation for a carryforward pursuant to Section 146(f) of the Internal Revenue Code, unless the committee expressly allows use of the allocation for a carryforward.

(d) No allocation made to a state agency or a local agency pursuant to this section may be transferred by the initial recipient thereof to any other state agency or local agency unless the committee expressly permits the transfer. With the committee's permission, any state or local agency may, by resolution, transfer to any other local agency or to any state agency or back to the committee all or any portion of the agency's private activity bond limit. Any such transfer shall be made in writing and may be general or limited and subject to any terms and conditions as may be set forth in the resolution or under the committee's permission, as long as the transfer is irrevocable upon issuance of bonds pursuant to the transfer, at least to the extent of the amount of the bonds so issued. Each transferee shall maintain a written record of the transfer in its records for at least the term of all private activity bonds issued pursuant to the transfer. No transfer may be made pursuant to this section in return for any payment of cash, property, or other marketable thing of value.

8869.86. (a) Subject to any limitations on transferred private activity bond limit as may be provided in subdivision (d) of Section 8869.85, any state agency or local agency may utilize its private activity bond limit for any of the following:

(1) The issuance of private activity bonds.

(2) If permitted by the committee, to make a carryforward election pursuant to Section 146(f) of the Internal Revenue Code.

(3) If permitted by the committee, to make a transfer to any state agency, local agency, or the committee.

(b) Prior to issuing any private activity bonds, the issuer shall, in

the bond resolution or other similar action giving approval for the issuance of bonds, specifically designate to the bond issue a portion of the private activity bond limit available or expected to be available to that issuer. The designation shall be irrevocable upon the issuance of the bonds to the extent of the amount thereof.

(c) Each state agency and local agency shall notify the committee in writing, as directed by the committee, after any of the following:

(1) The issuance of any private activity bonds.

(2) Any action taken pursuant to subdivision (d) of Section 8869.85 to transfer any portion of its private activity bond limit.

(3) Any election to treat all or any portion of the state agency's or local agency's private activity bond limit as a carryforward pursuant to Section 146(f) of the Internal Revenue Code. The committee shall keep the notices in its records for a period no less than the term of all private activity bonds issued as described in the notices.

8869.87. The committee may request local agencies and state agencies to provide the committee with information pertaining to the amount and purpose of anticipated future private activity bond issues, or any other information which may be useful to the committee in performing its duties and responsibilities under this chapter.

8869.88. The committee may transfer any private activity bond limit directly to any joint powers authority created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1. This section is specifically intended to be an expressed statement of an alternative allocation as provided in Temporary Treasury Regulations Section 1.103(n)-3T, A-14 and A-15, to the extent the regulations, or any successor thereto or similar regulations, are applicable to private activity bonds.

8869.89. Notwithstanding any other provision of this chapter, the committee may, upon any terms and conditions as it determines, authorize the use of a portion of the state ceiling, as contemplated by Section 146(n) of the Internal Revenue Code, in connection with the issuance by any state agency or local agency or mortgage credit certificates under a Qualified Mortgage Credit Certificate Program, as those terms are defined in Section 25(c) of the Internal Revenue Code.

8869.90. (a) The committee may charge fees to the lead underwriter or the bond purchaser to cover the committee's costs in carrying out the duties and responsibilities set out in this chapter. Any fees received shall be deposited in the California Debt Limit Allocation Committee Fund, which is hereby created. All money in the fund shall be available, when appropriated, for expenses of the committee and the Treasurer.

(b) Until the time that fees are received by the committee and appropriated pursuant to this chapter for the expenses of the committee, the committee may borrow any money as may be required for the purpose of meeting necessary expenses of initial organization and operation of the committee.

(c) Any moneys received by the committee from fees or deposits beginning in fiscal year 1987–88, shall also be deposited into the fund.

8869.91. This chapter is intended to provide a full, fair, flexible, and workable means of utilizing the state ceiling available under the Internal Revenue Code, and it shall be liberally construed and implemented to achieve those purposes.

8869.92. To the extent that any provision of this chapter is held to be inconsistent with or repugnant to the federal law, the provision shall be given effect in accordance with its terms to the greatest extent possible and consistent with federal law and an inconsistency shall have no effect on the remaining provisions of the chapter.

8869.93. The Treasurer, or his or her designee, is designated as the state official to certify that an issue of private activity bonds meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended, and to take any and all actions as may be necessary or appropriate in connection therewith.

SEC. 2.5. Chapter 11.8 (commencing with Section 8869.80) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 11.8. CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

8869.80. The Legislature hereby finds and declares that the Tax Reform Act of 1986 (Public Law 99-514) establishes a unified volume ceiling on the aggregate amount of private activity bonds which can be issued in each state. The unified volume ceiling is the product of seventy-five dollars ($75) multiplied by the state population in 1987 and fifty dollars ($50) multiplied by the state population in each succeeding calendar year.

The Legislature further finds and declares that the federal act requires each state to allocate its volume ceiling according to a specified formula unless a different procedure is established by Governor's proclamation or state legislation.

The Legislature further finds and declares that the Governor issued a proclamation on September 30, 1986, altering the allocation formula described in the act by centralizing the allocation process in the California Debt Limit Allocation Committee.

The Legislature further finds and declares that the federal act terminates the authority of a Governor's proclamation on December 31, 1987.

The Legislature, therefore, finds and declares that it is necessary to designate a state agency and create an allocation system to administer the state unified volume ceiling.

The Legislature further finds and declares that a substantial public benefit is served by promoting housing for lower income families and individuals.

The Legislature further finds and declares that a substantial public benefit is served by preserving and rehabilitating existing governmental assisted housing for lower income families and

individuals.

8869.81. This chapter is enacted to implement the state unified volume limit established in Section 1301 of the Federal Tax Reform Act of 1986 (Public Law 99-514) and Section 146 of the Internal Revenue Code.

8869.82. As used in this chapter, unless the context otherwise requires, the terms defined in this section shall have the following meanings:

(a) "Committee" means the California Debt Limit Allocation Committee established pursuant to Section 8869.83.

(b) "Fund" means the California Debt Limit Allocation Committee Fund created pursuant to Section 8869.90.

(c) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time.

(d) "Issuer" means any local agency or state agency authorized by the Constitution or laws of the state to issue private activity bonds.

(e) "Local agency" means any political subdivision of the state within the meaning of Section 103 of the Internal Revenue Code, or any entity that has the power to issue private activity bonds "on behalf of" any such political subdivision.

(f) "MBTCAC" means the Mortgage Bond and Tax Credit Allocation Committee created by Section 50185 of the Health and Safety Code.

(g) "Private activity bond" means a part or all of any bond (or other instrument) required to obtain a portion of the state's volume cap pursuant to Section 146 of the Internal Revenue Code in order to be tax exempt, including generally the following (as such bonds are defined in the Internal Revenue Code): (1) exempt facility bonds (except bonds for airports, docks and wharves, and certain solid waste facilities), (2) qualified mortgage bonds, (3) qualified small issue bonds, (4) qualified student loan bonds, (5) qualified redevelopment bonds, and (6) the nonqualified amount of an issue of governmental bonds (including advance refunds) exceeding fifteen million dollars ($15,000,000), as provided in Section 141(b)(5) of the Internal Revenue Code.

(h) "Private activity bond limit" means any portion of the state ceiling allocated or transferred to a state agency or local agency pursuant to this chapter.

(i) "State" means the State of California.

(j) "State agency" means the state and all state entities, including joint powers authorities of which the state or agency or instrumentality thereof is a member, empowered to issue private activity bonds, the interest on which is exempt from income tax under Section 103(a) of the Internal Revenue Code, including nonprofit corporations described in Section 150(d) of the Internal Revenue Code authorized to issue qualified scholarship funding bonds.

(k) "State ceiling" shall be the amount specified by Section 146(d) of the Internal Revenue Code for each calendar year

commencing in 1986.

Pursuant to Section 146(e) of the Internal Revenue Code, this chapter shall govern the allocation of the state ceiling among the state agencies and local agencies in this state having authority to issue private activity bonds. Any portion of the state ceiling allocated or transferred by or under the authority of this chapter shall become the private activity bond limit for the issuer of which such portion is allocated or transferred for any private activity bonds issued by that issuer.

8869.83. (a) There is in state government the California Debt Limit Allocation Committee, consisting of three members as follows:

(1) The Treasurer, or his or her designee.

(2) The Controller, or his or her designee.

(3) The Governor, or his or her designee.

(b) The Treasurer shall serve as chairperson of the committee and the office of the Treasurer shall provide any administrative assistance and support staff which is needed for the committee to operate. The chairperson shall keep, or cause to be kept, minutes and other records and documents of the committee.

(c) Members of the committee shall serve without compensation.

(d) Two members of the committee shall constitute a quorum. The affirmative vote of two members of the committee shall be necessary for any action taken by the committee. However, the committee may, by unanimous vote, delegate to its chairperson the authority to carry out any acts empowered to it under this chapter.

8869.84. (a) The committee shall, as soon as is practicable after the start of each calendar year, determine and announce the state ceiling for the calendar year.

(b) The entire state ceiling for each calendar year is hereby allocated to the committee to further allocate to state and local agencies as provided in this chapter.

(c) The committee shall prepare application forms and announce procedures for receipt and review of applications from state and local agencies desiring to issue private activity bonds.

(d) The committee may at any time, before or after granting any allocations in any calendar year to any state agencies or local agencies, announce priorities or reservations of any part of the state ceiling not theretofore allocated either for certain categories of bonds or categories of issuers.

(e) The committee may require any issuer making an application to the committee or MBTCAC for allocation of a portion of the state ceiling to make a deposit, as determined by the committee, of up to 1 percent of the portion requested. If an allocation is not given, the deposit shall be returned. If an allocation is given, the deposit shall be kept (in proportion to the amount of allocation given) until bonds are issued. Upon that issuance, the deposit shall be returned to the issuer in an amount equal to the product of (1) the amount of the deposit retained times (2) the ratio between the amount of bonds issued divided by the amount of allocation granted. If no bonds are

issued prior to the expiration of the allocation, the deposit shall be kept, unless the committee determines there is good cause to return all or part of the deposit. Any portion of a deposit kept shall be deposited in the fund.

(f) The committee may transfer part of the state ceiling to the MBTCAC, to be used for qualified mortgage bonds and exempt facility bonds, as those terms are used in the Internal Revenue Code, for qualified residential rental projects, as those terms are used in the Internal Revenue Code, (together referred to as "housing bonds"), with directions and conditions pursuant to which MBTCAC may allocate those amounts to issuers of housing bonds at both the state and local level. In carrying out these functions, MBTCAC shall act solely as directed or authorized by the committee. If the committee makes the transfer to MBTCAC authorized by this subdivision, the references in Sections 8869.85, 8869.86, 8869.87, and 8869.88 to the "committee" shall, for purposes of any housing bonds, be deemed to mean MBTCAC.

8869.85. (a) Each state agency shall apply to the committee for allocation of a portion of the state ceiling, supplying any information which the committee may require. The application may be for a specific project, or it may be for a designated dollar amount, to be utilized for projects or programs at the discretion of the state agency. No private activity bonds issued by any state agency shall be deemed to receive the benefit of any portion of the state ceiling unless the committee has allocated or permitted the transfer of a portion of the state ceiling to the state agency. The allocation may be on any terms and conditions as the committee may determine.

(b) Any local agency may apply to the committee for an allocation of a portion of the state ceiling, supplying any information which the committee may require. Applications from local agencies may only be for specific projects or programs. No private activity bond issued by a local agency shall be deemed to receive the benefit of any portion of the state ceiling unless the committee has allocated or permitted the transfer of a portion of the state ceiling to the local agency. The allocation may be upon any terms and conditions as the committee may determine.

(c) Any allocation made pursuant to this section shall be irrevocable upon issuance of bonds pursuant thereto at least to the extent of the amount of the bonds so issued. No allocation shall permit the state agency or local agency which receives it to use all or any portion of the allocation for a carryforward pursuant to Section 146(f) of the Internal Revenue Code, unless the committee expressly allows use of the allocation for a carryforward.

(d) No allocation made to a state agency or a local agency pursuant to this section may be transferred by the initial recipient thereof to any other state agency or local agency unless the committee expressly permits the transfer. With the committee's permission, any state or local agency may, by resolution, transfer to any other local agency or to any state agency or back to the

committee all or any portion of the agency's private activity bond limit. Any such transfer shall be made in writing and may be general or limited and subject to any terms and conditions as may be set forth in the resolution or under the committee's permission, as long as the transfer is irrevocable upon issuance of bonds pursuant to the transfer, at least to the extent of the amount of the bonds so issued. Each transferee shall maintain a written record of the transfer in its records for at least the term of all private activity bonds issued pursuant to the transfer. No transfer may be made pursuant to this section in return for any payment of cash, property, or other marketable thing of value.

8869.86. (a) Subject to any limitations on transferred private activity bond limit as may be provided in subdivision (d) of Section 8869.85, any state agency or local agency may utilize its private activity bond limit for any of the following:

(1) The issuance of private activity bonds.

(2) If permitted by the committee, to make a carryforward election pursuant to Section 146(f) of the Internal Revenue Code.

(3) If permitted by the committee, to make a transfer to any state agency, local agency, or the committee.

(b) Prior to issuing any private activity bonds, the issuer shall, in the bond resolution or other similar action giving approval for the issuance of bonds, specifically designate to the bond issue a portion of the private activity bond limit available or expected to be available to that issuer. The designation shall be irrevocable upon the issuance of the bonds to the extent of the amount thereof.

(c) Each state agency and local agency shall notify the committee in writing, as directed by the committee, after any of the following:

(1) The issuance of any private activity bonds.

(2) Any action taken pursuant to subdivision (d) of Section 8869.85 to transfer any portion of its private activity bond limit.

(3) Any election to treat all or any portion of the state agency's or local agency's private activity bond limit as a carryforward pursuant to Section 146(f) of the Internal Revenue Code. The committee shall keep the notices in its records for a period no less than the term of all private activity bonds issued as described in the notices.

8869.87. The committee may request local agencies and state agencies to provide the committee with information pertaining to the amount and purpose of anticipated future private activity bond issues, or any other information which may be useful to the committee in performing its duties and responsibilities under this chapter.

8869.88. The committee may transfer any private activity bond limit directly to any joint powers authority created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1. This section is specifically intended to be an expressed statement of an alternative allocation as provided in Temporary Treasury Regulations Section 1.103(n)-3T, A-14 and A-15, to the extent the regulations, or any successor thereto or similar regulations, are

applicable to private activity bonds.

8869.89. Notwithstanding any other provision of this chapter, the committee may, upon any terms and conditions as it determines, authorize the use of a portion of the state ceiling, as contemplated by Section 146(n) of the Internal Revenue Code, in connection with the issuance by any state agency or local agency or mortgage credit certificates under a Qualified Mortgage Credit Certificate Program, as those terms are defined in Section 25(c) of the Internal Revenue Code.

8869.90. (a) The committee may charge fees to the lead underwriter or the bond purchaser to cover the committee's costs in carrying out the duties and responsibilities set out in this chapter. Any fees received shall be deposited in the California Debt Limit Allocation Committee Fund, which is hereby created. All money in the fund shall be available, when appropriated, for expenses of the committee and the Treasurer.

(b) Until the time that fees are received by the committee and appropriated pursuant to this chapter for the expenses of the committee, the committee may borrow any money as may be required for the purpose of meeting necessary expenses of initial organization and operation of the committee.

(c) Any moneys received by the committee from fees or deposits beginning in fiscal year 1987–88, shall also be deposited into the fund.

8869.91. This chapter is intended to provide a full, fair, flexible, and workable means of utilizing the state ceiling available under the Internal Revenue Code, and it shall be liberally construed and implemented to achieve those purposes.

8869.92. To the extent that any provision of this chapter is held to be inconsistent with or repugnant to the federal law, the provision shall be given effect in accordance with its terms to the greatest extent possible and consistent with federal law and an inconsistency shall have no effect on the remaining provisions of the chapter.

8869.93. The Treasurer, or his or her designee, is designated as the state official to certify that an issue of private activity bonds meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended, and to take any and all actions as may be necessary or appropriate in connection therewith.

SEC. 3. Section 16731 of the Government Code is amended to read:

16731. Whenever the committee determines that the sale of all or any part of the bonds authorized to be issued is necessary or desirable, it shall adopt a resolution to that effect. The resolution shall authorize and direct the Treasurer to arrange for the preparation of the requisite number of suitable bonds, either in coupon or registered form, and shall specify as to the bonds then to be sold:

(a) The aggregate number, aggregate par value, denominations and the date of the bonds to be then sold. The denominations shall be in the sum of one thousand dollars ($1,000), or multiples of that sum. The date appearing on the bonds shall be deemed to be the date

of issuance for all purposes of this chapter, irrespective of the actual date of delivery of the bonds and the payment of the purchase price of the bonds.

(b) The dates of maturity, and the amount of the bonds maturing at each date of maturity, which amounts need not be equal, but which dates shall be at annual or semiannual intervals, and the first of which dates of maturity shall be not more than five years, and the last of which dates of maturity shall be not more than 45 years, after the date of the bonds.

(c) Whether or not the bonds are to be subject to redemption at the option of the board prior to maturity, and, if so, the provisions for the redemption, the manner of the call thereof, and the price or prices at which the bonds shall be subject to redemption.

(d) The annual rate, or rates, of interest which the bonds to be issued shall bear, which may be in multiples of one-eighth or one-twentieth of 1 percent, payable semiannually, but not in excess of 11 percent, which rate or rates may be determined at the time of the sale of the bonds.

(e) The interest payment dates.

(f) The technical form and language of the bonds and any interest coupons to be attached to the bonds.

(g) Whether or not the right is reserved to make delivery in the form of temporary or interim bonds, certificates, or receipts, exchangeable for definitive bonds when executed and available for delivery, and if the right is reserved the denominations and form of the temporary securities.

(h) Whether the bonds are to be issued in coupon form or in fully registered form, or both, and whether or not any coupon bonds are to be subject to registration, and if so, whether the registration is to be as to principal only, or as to both principal and interest, or in either of the forms at the option of the holder, and the form and all of the terms and conditions of the registration. If the registration is provided for, coupon bonds may be interchanged for registered bonds and registered bonds for coupon bonds, and all of the provisions of this chapter with reference to the payment of bonds and interest coupons shall be subject to the terms and conditions of the registration with respect to the payment of registered bonds and the interest on registered bonds.

(i) All other terms and conditions of the bonds and of the execution, issuance, and sale of the bonds, which shall be consistent with all of this chapter.

(j) Notwithstanding subdivision (a), the provisions, if any, for the interexchange of coupon or registered bonds of different denominations and the issuance of coupon or registered bonds in lieu of, or in exchange for, bonds of a like aggregate principal amount but of different denominations and in either coupon or registered form, or partly in coupon and partly in registered form.

SEC. 4. Section 53531 of the Government Code, as amended by Section 2 of Chapter 579 of the Statutes of 1985, is amended to read:

53531. Any provision of law specifying the maximum interest rate on bonds to the contrary notwithstanding, bonds may bear interest at a coupon rate or rates as determined by the legislative body in its discretion but not to exceed 12 percent per year payable as permitted by law, unless some higher rate is permitted by law.

SEC. 5. Section 53531 of the Government Code, as amended by Section 3 of Chapter 579 of the Statutes of 1985, is repealed.

SEC. 6. Section 53532 of the Government Code, as amended by Section 4 of Chapter 579 of the Statutes of 1985, is amended to read:

53532. The provisions of Section 53531 shall apply only to coupon rates and shall not affect the power of a local agency to sell bonds at a discount below par if permitted by law. Any provision of law permitting bonds to be sold at a discount but specifying a maximum interest yield on bonds sold at a discount to the contrary notwithstanding, the bonds may be sold at a price yielding to the purchaser an effective interest rate of not to exceed 12 percent per year, payable as permitted by law, according to standard tables of bond values.

SEC. 7. Section 53532 of the Government Code, as amended by Section 5 of Chapter 579 of the Statutes of 1985, is repealed.

SEC. 8. Section 53541 of the Government Code, as amended by Section 6 of Chapter 579 of the Statutes of 1985, is amended to read:

53541. Any provision of law requiring an election to the contrary notwithstanding, the legislative body without a vote of the electors may issue bonds of the local agency, zone or improvement district if all the following occur:

(a) The principal amount of such bonds does not exceed the then unissued balance of the principal amount of bonds of the same type authorized at an election heretofore held in the local agency, or in such zone or improvement district.

(b) The bonds are issued for the same purpose as that for which the unissued bonds were authorized.

(c) The bonds are issued in accordance with the laws governing the issuance of bonds of the local agency, except for the requirement of a bond election.

Bonds issued pursuant to this section may bear interest at a rate or rates not to exceed 12 percent per year. When bonds are issued pursuant to this section, unissued bonds as referred to in subdivisions (a) and (b) in a principal amount at least equal to the principal amount of bonds issued pursuant to this section, shall be canceled by order of the legislative body and shall not be issued.

SEC. 9. Section 53541 of the Government Code, as amended by Section 7 of Chapter 579 of the Statutes of 1985, is repealed.

SEC. 10. 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, up to 1 percent of the dollar amount of qualified mortgage bonds being requested for allocation, as determined by the committee. When it finds special circumstances exist, the committee may reduce the amount of the deposit required. Those 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 up to 1 percent of the dollar amount of bonds allocated, as determined by the committee, 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.

If an issuer establishes a mortgage credit certificate program, the amount or a portion of the amount the issuer has on deposit in an interest-bearing account or in a letter of credit in accordance with the preceding paragraph, may be withdrawn by the issuer at the following times:

(1) All of the amount on deposit or the amount of the letter of credit immediately following the issuance of all of the issuer's mortgage credit certificates.

(2) That portion of the amount on deposit or the amount of the letter of credit in proportion to the amount of the mortgage credit certificates that have been issued by the issuer.

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 these 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 judgment 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. These 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. 11. If Senate Bill No. 113 of the 1987–88 Regular Session of the Legislature is chaptered, Section 2 of this act shall not become operative, and Section 2.5 of this act shall become operative. If Senate Bill No. 113 of the 1987–88 Regular Session of the Legislature is not chaptered, Section 2 of this act shall become operative, and Section 2.5 of this act shall not become operative.

CHAPTER 944

An act to add and repeal Article 8 (commencing with Section 18540) of Chapter 17 of Part 10 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Article 8 (commencing with Section 18540) is added to Chapter 17 of Part 10 of Division 2 of the Revenue and Taxation Code, to read:

Article 8. Designations to the California Alzheimer's Disease and Related Disorders Research Fund

18540. The Legislature finds and declares all of the following:

(a) Alzheimer's disease and related disorders are devastating health conditions which affect a significant number of Californians and can cause serious financial, social, and emotional hardships on the victims and their family caregivers. Approximately 50 percent of all nursing home admissions in the state may be attributable to Alzheimer's disease and related disorders.

(b) There is no known cause or cure for Alzheimer's disease at this time. It is also acknowledged that its continued progression over time can lead to other medical disorders that generally prove fatal.

(c) It is the intent of the Legislature, in enacting this article, to establish a systematic program for the conduct of research regarding the cause, cure, and treatment of Alzheimer's disease and related disorders. The outcome of this research may have direct effects and consequences on the development of a comprehensive system which will provide diagnoses and treatment to victims of those health problems. This program shall award grants to eligible physicians, hospitals, laboratories, educational institutions, and other organizations and persons for the purpose of enabling those organizations and persons to conduct research.

18541. For the purposes of this article, "research" shall include, but not be limited to, expenditures to develop and advance the understanding, techniques, and modalities effective in the care, treatment, and cure of Alzheimer's victims and their families.

18542. (a) Any taxpayer may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Alzheimer's Disease and Related Disorders Research Fund , which is established by Section 18543. That designation is to

be used as a voluntary checkoff on the tax return.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on the joint return.

(c) A designation under subdivision (a) shall be made for any taxable year on the individual return for that taxable year, and once made shall be irrevocable. In the event that payments and credits reported on the return, together with any other credits associated with the taxpayer's account, do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made. In the event that no designee is specified, the contribution shall be transferred to the General Fund, after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and administration of funds under this article.

(d) In the event a taxpayer designates a contribution to more than one account, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the forms of the return to include a space labeled the "Alzheimer's Disease/Related Disorders Fund" to allow for the designation permitted under subdivision (a). The forms shall also include in the instructions information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used to conduct research relating to the cure and treatment of Alzheimer's disease.

(f) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 for any contribution made pursuant to subdivision (a).

18543. There is in the State Treasury the California Alzheimer's Disease and Related Disorders Research Fund to receive contributions made pursuant to Section 18542. The Franchise Tax Board shall notify the Controller of both the amount of money paid by taxpayers in excess of their tax liability and the amount of refund money which taxpayers have designated pursuant to Section 18542 to be transferred to the California Alzheimer's Disease and Related Disorders Research Fund. The Controller shall transfer from the Personal Income Tax Fund to the California Alzheimer's Disease and Related Disorders Research Fund an amount not in excess of the sum of the amounts designated by individuals pursuant to Section 18542 for payment into that fund.

18544. All money transferred to the California Alzheimer's Disease and Related Disorders Research Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) To the appropriate state department as established by the Secretary of the Health and Welfare Agency in consultation with the Department of Aging, and any others which the secretary deems appropriate. These funds shall be expended for the purpose of

conducting research relating to the care, treatment, and the cure of Alzheimer's disease through contracts or grants developed and awarded as determined by the Secretary of the Health and Welfare Agency, in consultation with the Department of Aging and any others which the secretary deems appropriate.

18545. This article shall remain in effect only until January 1, 1992, and as of that date, is repealed unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 2. It is the intent of the Legislature that contributions made to the California Alzheimer's Disease and Related Disorders Research Fund shall not be used to offset or otherwise reduce the current or subsequent years' budget appropriations earmarked for Alzheimer's disease research.

CHAPTER 945

An act to add and repeal Article 8 (commencing with Section 18540) of Chapter 17 of Part 10 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Article 8 (commencing with Section 18540) is added to Chapter 17 of Part 10 of Division 2 of the Revenue and Taxation Code, to read:

Article 8. Designations to the California Alzheimer's Disease and Related Disorders Research Fund

18540. The Legislature finds and declares all of the following:

(a) Alzheimer's disease and related disorders are devastating health conditions which affect a significant number of Californians and can cause serious financial, social, and emotional hardships on the victims and their family caregivers. Approximately 50 percent of all nursing home admissions in the state may be attributable to Alzheimer's disease and related disorders.

(b) There is no known cause or cure for Alzheimer's disease at this time. It is also acknowledged that its continued progression over time can lead to other medical disorders that generally prove fatal.

(c) It is the intent of the Legislature, in enacting this article, to establish a systematic program for the conduct of research regarding the cause, cure, and treatment of Alzheimer's disease and related disorders. The outcome of this research may have direct effects and consequences on the development of a comprehensive system which will provide diagnoses and treatment to victims of those health

problems. This program shall award grants to eligible physicians, hospitals, laboratories, educational institutions, and other organizations and persons for the purpose of enabling those organizations and persons to conduct research.

18541. For the purposes of this article, "research" shall include, but not be limited to, expenditures to develop and advance the understanding, techniques, and modalities effective in the care, treatment, and cure of Alzheimer's victims and their families.

18542. (a) Any taxpayer may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Alzheimer's Disease and Related Disorders Research Fund, which is established by Section 18543. That designation is to be used as a voluntary checkoff on the tax return.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on the joint return.

(c) A designation under subdivision (a) shall be made for any taxable year on the individual return for that taxable year, and once made shall be irrevocable. In event that payments and credits reported on the return, together with any other credits associated with the taxpayer's account, do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made. In the event that no designee is specified, the contribution shall be transferred to the General Fund, after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and the administration of funds under this article.

(d) In the event a taxpayer designates a contribution to more than one account, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the forms of the return to include a space labeled the "Alzheimer's Disease/Related Disorders Fund" to allow for the designation permitted under subdivision (a). The forms shall also include in the instructions information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used to conduct research relating to the cure and treatment of Alzheimer's disease.

(f) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 for any contribution made pursuant to subdivision (a).

18543. There is in the State Treasury the California Alzheimer's Disease and Related Disorders Research Fund to receive contributions made pursuant to Section 18542. The Franchise Tax Board shall notify the Controller of both the amount of money paid by taxpayers in excess of their tax liability and the amount of refund money which taxpayers have designated pursuant to Section 18542 to be transferred to the California Alzheimer's Disease and Related Disorders Research Fund. The Controller shall transfer from the Personal Income Tax Fund to the California Alzheimer's Disease and Related Disorders Research Fund an amount not in excess of the sum

of the amounts designated by individuals pursuant to Section 18542 for payment into that fund.

18544. All money transferred to the California Alzheimer's Disease and Related Disorders Research Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board for reimbursement of all costs incurred by the Franchise Tax Board in connection with its duties under this article.

(b) To the appropriate state department as established by the Secretary of the Health and Welfare Agency in consultation with the Department of Aging, and any others which the secretary deems appropriate. These funds shall be expended for the purpose of conducting research relating to the care, treatment, and the cure of Alzheimer's disease through contracts or grants developed and awarded as determined by the Secretary of the Health and Welfare Agency, in consultation with the Department of Aging and any others which the secretary deems appropriate.

18545. This article shall remain in effect only until January 1, 1992, and as of that date, is repealed unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 2. It is the intent of the Legislature that contributions made to the California Alzheimer's Disease and Related Disorders Research Fund shall not be used to offset or otherwise reduce the current or subsequent years' budget appropriations earmarked for Alzheimer's disease research.

CHAPTER 946

An act to amend Section 19770 of the Government Code, relating to military leave.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 19770 of the Government Code, is amended to read:

19770. (a) This part, rather than provisions of the Military and Veterans Code, governs leave for military service, rights and benefits accrued during that service, and reinstatement after that service, for civil service employees. Both the State Personnel Board and the Department of Personnel Administration have responsibilities for carrying out certain provisions of this chapter as provided in subdivision (b).

(b) The State Personnel Board is responsible for the provisions of this chapter pertaining to civil service examinations, list eligibility, appointments, reinstatements, probationary periods, and status. The

Department of Personnel Administration is responsible for the provisions of this chapter on eligibility for military leave and the effect of these leaves on the employee's salary, vacation, sick leave, and seniority.

CHAPTER 947

An act to amend Section 1568.12 of, to amend the heading of Chapter 3.3 (commencing with Section 1568.10) of Division 2 of, to add Section 1568.22 to, and to repeal Chapter 3.3 (commencing with Section 1568.10) of Division 2 of, the Health and Safety Code, relating to Alzheimer's disease.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987]

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

SECTION 1. The heading of Chapter 3.3 (commencing with Section 1568.10) of Division 2 of the Health and Safety Code is amended to read:

CHAPTER 3.3. ALZHEIMER'S DAY CARE-RESOURCE CENTERS ACT

SEC. 2. Section 1568.12 of the Health and Safety Code is amended to read:

1568.12. The following powers and duties are hereby vested in the department:

(a) The department shall supervise a program in specialized day care-resource centers for participants developed pursuant to this chapter.

(b) (1) The department shall conduct a grants-in-aid program, subject to the funds appropriated, for that purpose.

(2) The maximum award by the department to any grantee shall be sixty thousand dollars ($60,000) per year, and a grantee shall be required to match not less than 25 percent of the amount granted. The use of the grants shall be limited to the expenses of administration, staffing, operating expenses, such as rent and utilities, equipment, and required renovation expenses.

(3) The matching contribution of the grantee may include cash or in-kind contributions, and the in-kind contribution may include the value of staffing or volunteer services, or both.

(4) Grants shall be awarded in different geographical areas of the state. Grantees shall include at least one urban and one rural center, with representation from the north, south, and central regions of the state.

(c) The department shall adopt policies, priorities, and guidelines to carry out the purposes of this chapter, and the adoption thereof

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.

The Adult Day Health Care Review Committee, established by Section 1572, shall make recommendations to the department on the selection of grantees to operate Alzheimer's day care-resource centers. If Senate Bill 601 of the 1987–88 Regular Session is enacted and amends Section 1572, the Long-Term Care Committee as provided for in that bill shall make recommendations to the department on the selection of grantees under this section.

Subject to funds appropriated for that purpose, the department shall allocate the funds necessary to continue operation of the Alzheimer's day care-resource centers, administered pursuant to this part, during the 1987–88, 1988–89, 1989–90, and 1990–91 fiscal years.

SEC. 3. Section 1568.22 is added to the Health and Safety Code, to read:

1568.22. This chapter shall become inoperative on July 1, 1991, and, as of January 1, 1992, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1992, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 948

An act to amend Sections 4700 and 4726 of the Civil Code, to amend Section 640.1 of the Code of Civil Procedure, and to amend Section 11475.1 of the Welfare and Institutions Code, relating to family law.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 4700 of the Civil Code is amended to read:

4700. (a) In any proceeding where there is at issue the support of a minor child or a child for whom support is authorized under Section 206, the court may order either or both parents to pay any amount necessary for the support, maintenance, and education of the child. At the request of either party, the court shall make appropriate findings with respect to the circumstances on which the order for the support of a minor child is based. Upon a showing of good cause, the court may order the parent or parents required to make the payment of support to give reasonable security therefor. All payments of support shall be made by the person owing the support payment prior to the payment of any debts owing to creditors. Any order for child support may be modified or revoked as the court may deem necessary, except as to any amount that may have accrued prior to the date of the filing of the notice of motion or order to show cause to modify or revoke. Any order for child

support, as well as any order of modification or revocation of such an order, may be made retroactive to the date of the filing of the notice of motion or order to show cause therefor, or to any subsequent date, except as may otherwise be prescribed by federal law (42 U.S.C. Sec. 666(a) (9)). An order of modification or revocation may include an award of attorney fees and court costs to the prevailing party.

(b) The court may order financial compensation for periods when a parent fails to assume the caretaker responsibility, or when a parent has been thwarted by the other parent when attempting to exercise visitation or custody rights, contemplated by a custody or visitation order entered pursuant to this part, including, but not limited to, an order for joint physical custody or by a written or oral agreement between the parents. The compensation shall be limited to (1) the reasonable expenses incurred for, or on behalf of, a child, resulting from the other parent's failure to assume his or her caretaker responsibility or (2) reasonable expenses incurred by a parent for or on behalf of a child resulting from the other parent's thwarting his or her efforts to exercise visitation or custody rights. These expenses may include the value of caretaker services, but are not limited to the cost of services provided by a third party during the relevant period.

The compensation may be requested by noticed motion or an order to show cause and shall allege, under penalty of perjury, a minimum of one hundred dollars ($100) of expenses so incurred or, at least three occurrences of failure to exercise visitation or custody rights or at least three occurrences of the thwarting of efforts to exercise visitation or custody rights within the six months prior to filing of the motion or order.

Attorney's fees shall be awarded to the prevailing party, upon a showing of the nonprevailing party's ability to pay.

(c) When a court orders a person to make specified payments for support of a child during the child's minority, or until the child is married or otherwise emancipated, or until the death of, or the occurrence of a specified event as to, a child for whom support is authorized under Section 206, the liability of the person ordered to pay support terminates upon the happening of the contingency. If the custodial parent or other person having physical custody of the child, to whom payments are to be made, fails to notify the person ordered to make those payments, or the attorney of record of the person ordered to pay support, of the happening of the contingency, and continues to accept support payments, the person shall refund any and all moneys received which accrued after the happening of the contingency, except that the overpayments shall first be applied to any and all support payments which are then in default. The court may, in the original order for support, order the custodial parent or other person to whom payments are to be made to notify the person ordered to make the payments, or his or her attorney of record, of the happening of the contingency.

(d) In the event obligations for support of a child are discharged in bankruptcy, the court may make all proper orders for the support,

maintenance and education of the child, as the court may deem just.

SEC. 2. Section 4726 of the Civil Code is amended to read:

4726. (a) The court shall require that health insurance coverage for the supported children shall be maintained by either or both parents if that insurance is available at no cost or at nominal cost to the parent or parents. In cases in which the court determines that health insurance coverage is not available at no or nominal cost, the court's order for support shall contain a provision which specifies that health insurance coverage shall be obtained if it becomes available at no or nominal cost. Upon health insurance coverage at no or nominal cost becoming available to the parent or parents, the parent or parents shall apply for that coverage.

(b) Where the district attorney has been designated as the assigned payee for child support, the court shall order the parent or parents to notify the district attorney upon applying for health insurance coverage for the child within a reasonable period of time.

The district attorney shall obtain a completed medical form from the parent or parents in accordance with Section 11490 of the Welfare and Institutions Code and shall forward the completed form to the State Department of Health Services.

(c) This section is applicable in all cases, irrespective of whether the support award made is based on the mandatory minimum schedule or a higher amount based on a state or county schedule.

SEC. 2.5. Section 640.1 of the Code of Civil Procedure is amended to read:

640.1. (a) To the extent required by federal law, all applications filed by the district attorney for an order to establish or enforce child support, except paternity cases or those cases involving complex issues, as defined in subdivision (a) of Section 11475.1 of the Welfare and Institutions Code, shall be referred for hearing to a commissioner or a referee, unless the district attorney of that particular county has applied for, and received, an exemption from this requirement from the State Department of Social Services.

Paternity cases and cases involving complex issues, as defined in subdivision (a) of Section 11475.1 of the Welfare and Institutions Code, may be referred to and heard by a commissioner or a referee, if deemed appropriate by the commissioner or referee. If the case is heard by a commissioner or referee, the time limits specified in subdivision (a) of Section 11475.1 of the Welfare and Institutions Code do not apply.

In counties which operate an expedited process, commissioners and referees shall order a temporary support obligation under the expedited process in complex cases, as defined in subdivision (a) of Section 11475.1 of the Welfare and Institutions Code, prior to referring those cases to the full judicial system.

All applications to be heard by a commissioner or referee shall be made returnable on an order to show cause within 30 days after service thereof or heard on a noticed motion within 30 days after service of notice. The matter shall not be heard earlier than 10 days

after service of the order to show cause or notice of motion and supporting papers. The hearing shall not be continued to a date more than 10 days after the date originally set for hearing.

Nothing in this section prohibits persons other than the district attorney from bringing an action under this section, if permitted by that particular county. However, actions brought by the district attorney shall have priority over actions brought by other persons.

(b) At the hearing, the commissioner or referee shall, where appropriate, do all of the following:

(1) Take testimony.

(2) Establish a record, evaluate evidence, and make recommendations or decisions.

(3) Accept voluntary acknowledgments of support liability and parentage and stipulated agreements respecting the amount of child support to be paid.

(4) Enter default orders where authorized pursuant to Section 639.5.

(c) Except where a default or stipulated order has been entered by a commissioner or a referee, a recommended order shall be filed by the commissioner or referee within seven court days after the hearing concludes. The clerk shall mail an endorsed copy first class, postage prepaid, to all parties by the close of the business day on which the order is filed, together with a notice of a review hearing before a judge of the superior court, stating the date any party may appear and object to the recommended order. As an alternative to mailing the copy of the order and the notice to the parties, the clerk may personally serve the copy of the order and the notice at the time of the hearing. The clerk shall also provide a written notice of that hearing to all persons appearing at the hearing before the commissioner or referee. The hearing in superior court shall take place no less than 15 days nor later than 20 days following the mailing of the recommended order to all parties. The hearing before the superior court shall not be continued to a date more than 10 days after the date originally set for hearing. Section 1013 does not apply to these time limits.

(d) Except as provided in subdivision (e), on the appointed hearing date, the superior court shall independently review the record of the original hearing, any supplemental papers filed, hear any oral objections and responses thereto, and either adopt the recommended order or modify it on such terms as the interests of justice require.

(e) Notwithstanding subdivision (d), on its own motion, the superior court may rehear the matter. Any rehearing determined necessary by the court shall be heard within 10 days of the date of the hearing required by subdivision (d). At the conclusion of the hearing, the superior court shall either adopt the recommended order or modify it on such terms as the interests of justice require.

(f) If no objection to the recommended order is presented to the court on the date specified in subdivision (c), the court shall adopt

the recommended order, unless it modifies it on its own motion, consistent with the interests of justice, as described in subdivision (e).

SEC. 3. Section 11475.1 of the Welfare and Institutions Code is amended to read:

11475.1. (a) Each county shall maintain a single organizational unit located in the office of the district attorney which shall have the responsibility for promptly and effectively enforcing child and spousal support obligations and determining paternity in the case of a child born out of wedlock. The district attorney shall take appropriate action, both civil and criminal, to enforce this obligation when the child is receiving public assistance, and when requested to do so by the individual on whose behalf the enforcement efforts will be made when the child is not receiving public assistance. To the extent required by federal law, actions brought by the district attorney to establish or enforce support obligations in all cases, other than paternity cases or those cases involving complex issues, shall be completed within the following time limits: (1) 90 percent of the actions shall be completed within three months from the date of service; (2) 98 percent of the actions shall be completed within six months from the date of service; and (3) 100 percent of the actions shall be completed within 12 months from the date of service. As used in this section, "service" means the service of process required by law for the particular proceeding. This responsibility applies to spousal support only where the spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act, the effective date of the modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date. In any action brought or enforcement proceedings instituted by the district attorney pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the district attorney at any time within the period otherwise specified for the enforcement of a support judgment, notwithstanding the fact that the child has attained the age of majority. The county shall undertake an outreach program to inform the public that this service is available to persons not receiving public assistance. There shall be prominently displayed in every public area of every office of the units established by this section a notice, in clear and simple language prescribed by the Director of Social Services, that child and spousal support enforcement services are provided to all individuals whether or not they are recipients of public social services.

In any action for child support brought by the district attorney in the performance of duties under this section, the district attorney may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be

referred to as an order for temporary support. This order shall have the same force and effect as a like or similar order under the Family Law Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code).

The district attorney shall file a motion for an order for temporary support within the following time limits:

(1) If the defendant is the mother, a presumed father under subdivision (a) of Section 7004 of the Civil Code, or any father where the child is at least six months old when the defendant files his answer, the time limit is 90 days after the defendant files an answer.

(2) In any other case where the defendant has filed an answer prior to the birth of the child or not more than six months after the birth of the child, then the time limit is nine months after the birth of the child.

If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

If the district attorney fails to file a motion for an order for temporary support within time limits specified in this section, the district attorney shall be barred from obtaining a judgment of reimbursement for any support provided for that child during the period between the date the time limit expired and the motion was filed, or, if no such motion is filed, when a final judgment is entered.

Nothing in this section prohibits the district attorney from entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the State Department of Social Services.

Nothing in this section shall otherwise limit the ability of the district attorney from securing and enforcing orders for support of a spouse or former spouse as authorized under any other provision of law.

As used in this subdivision, "complex issues" means issues arising in the following types of cases: (1) any case which could directly result in a person's incarceration; (2) any case involving the right to jury trial; and (3) any case so deemed by a commissioner, a referee, or a superior court judge.

In counties which operate an expedited process in accordance with Section 640.1 of the Code of Civil Procedure, commissioners and referrees shall order a temporary support obligation under the expedited process in complex cases, as defined in this section, prior to referring those cases to the full judicial system.

(b) As used in this article, "enforcing obligations" includes, but is not limited to, (1) the use of all interception and notification systems operated by the State Department of Social Services for the purposes of aiding in the enforcement of support obligations and (2) the obtaining by the district attorney of an initial order for child support, by civil or criminal process, without regard to whether the child is

receiving public assistance.

(c) As used in this section "out of wedlock" means that the biological parents of the child were not married to each other at the time of the child's conception.

(d) The district attorney is the public agency responsible for administering wage withholding for the purposes of Title IV-D of the Social Security Act. The district attorney shall seek a wage assignment in any case as soon as the obligor is in arrears in payment in a sum equal to the amount of support payable for one month pursuant to Section 4701 of the Civil Code.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 949

An act to amend Sections 11512 and 11512.05 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 11512 of the Insurance Code is amended to read:

11512. No hospital service contract shall be entered into between a corporation proposing to furnish or provide any one or more of the services authorized under this chapter and a subscriber:

(a) Unless the entire consideration therefor is expressed in the contract;

(b) Unless the times at which the benefits or services to the subscriber take effect and terminate are stated in a portion of the contract above the evidence of its execution;

(c) If the contract purports to entitle more than one person to benefits or services except family hospital service contracts issued under Section 11512.1, group hospital service contracts issued under Section 11512.2 and blanket contracts issued under Section 11512.4;

(d) Unless every printed portion and any endorsement or attached papers is plainly printed in type of which the face is not smaller than 10 points;

(e) Except for group hospital service contracts and blanket contracts issued under Section 11512.2, unless the exceptions of the contract are printed with greater prominence than the benefits to which they apply;

(f) Except for group hospital service contracts and blanket contracts issued under Section 11512.2, unless, if any portion of such contract purports, by reason of the circumstances under which an illness, injury or disablement is incurred to reduce any service to less than that provided for the same illness, injury or disablement incurred under ordinary circumstances, such portion is printed in boldface type and with greater prominence than any other text of the contract;

(g) If the contract contains any provisions purporting to make any portion of the charter, constitution or bylaws of such nonprofit corporation a part of the contract unless such portion is set forth in full in the contract;

(h) Except for a comprehensive health care contract issued under subdivision (e) of Section 11493, unless the contract for hospital service contains in boldface type not less than 10-point the following provisions:

Nothing in this contract contained shall in any way or manner restrict or interfere with the right of any individual entitled to hospital service and care hereunder to select the contracting hospital or to make a free choice of his or her attending physician, who shall be the holder of a valid and unrevoked physician and surgeon's certificate and who is a member of, or acceptable to, the attending staff and board of directors of the hospital in which said hospital services are to be provided and rendered.

A contract need not contain the foregoing provisions of this subdivision when a plan has negotiated and entered into contracts for alternative rates of payment with professional or institutional providers, and offers the benefits of those alternative rates to group contractors or individual subscribers who select those providers. A contract need not contain the foregoing provisions when a plan, by agreement with group contractors, limits payments under a contract to services secured by subscribers from professional or institutional providers charging alternative rates pursuant to contract with that plan.

(i) Contracts for alternative rates of payment with institutional and professional providers made pursuant to subdivision (h) of this section shall be executed in the name of the plan and fully disclosed to the contracting providers.

A contract which, by agreement with group contractors, limits payments to services secured by subscribers from providers charging alternative rates shall meet the provisions of Section 10133.5 of the Insurance Code.

A contract which, by agreement with group contractors limits payments under a contract to services secured by subscribers from institutional providers charging alternative rates pursuant to

contract with such plan, and after July 1, 1983, to services secured by both professional and institutional providers, shall include programs for the continuous review of the quality of care, performance of medical personnel, utilization of services and facilities and costs by professionally recognized unrelated third parties utilizing in the case of professional providers similarly licensed providers for each medical and dental service covered under the plan and utilizing in the case of institutional providers appropriate professional providers. All provisions of the laws of the state relating to immunity from liability and discovery privileges for medical and dental peer review shall apply to the licensed providers performing the foregoing activities.

Nothing in this section shall be construed to authorize a plan to engage in the practice of medicine, or to exercise medical or dental professional judgment.

(j) If such contract contains coverage for sterilization operations or procedures and it imposes any disclaimer, restriction on, or limitation of coverage relative to the insured's reason for sterilization. All such contracts entered into or renewed on or after March 7, 1973, shall be construed to be in compliance with this section, and any provision in any such contract which is in conflict with this section shall be of no force or effect;

(k) Unless, in the case of a contract which provides benefits that accrue after a certain time of confinement in a health care facility, the contract specifies what constitutes a day of confinement or the number of consecutive hours of confinement which are requisite to the commencement of benefits.

SEC. 2. Section 11512.05 of the Insurance Code is amended to read:

11512.05. (a) A nonprofit hospital service plan which negotiates and enters into contracts with professional providers pursuant to subdivision (h) of Section 11512 for alternative rates of payment and offers the benefits of those alternative rates to group contractors or individual subscribers who select those providers, shall give reasonable consideration to timely written proposals for contracting by licensed or certified professional providers.

(b) For the purposes of this section, the following definitions are applicable:

(1) "Reasonable consideration" means consideration in good faith of the terms of proposals for contracting prior to the time that contracts for alternative rates of payment are entered into or renewed. A plan may specify the terms and conditions of contracting to assure cost efficiency, qualification of providers, appropriate utilization of services, accessibility, convenience to persons who would receive the provider's services, and consistency with the plan's basic method of operation, but shall not exclude providers because of their category of license.

(2) "Professional provider" means a holder of a certificate or license under Division 2 (commencing with Section 500) of the

Business and Professions Code, or any initiative act referred to therein, except for those certified or licensed pursuant to Article 3 (commencing with Section 2050) of Chapter 5 or Chapter 11 (commencing with Section 4800), who may, within the scope of their licenses, perform the services of a specific plan benefit defined in the hospital service plan's contracts with its contract holders.

(c) A plan which has a contract with an institutional provider or with professional providers is not required by this section to give consideration to contracting with professional providers who hold the same category of license or certificate and propose to serve a geographic area served adequately by the contracting providers that provide their professional services as employees or agents of that institutional or professional provider, or contract with that institutional or professional provider to provide professional services.

(d) In every description of plan benefits, and in every directory of participating hospitals and professional providers, or similar document, listing or identifying participating providers in a geographical area served by the plan, the plan shall state that the plan will reimburse subscribers for services of any professional provider duly licensed by the State of California, whether or not the provider participates on a contracting basis with the plan. Where permitted by Section 10176, the plan may state that as to certain provider categories, reimbursement is conditioned on physician referral.

(e) In each directory of participating hospitals and professional providers, at the appropriate alphabetical locations within each geographical list of participating providers, the plan shall list every provider category licensed by Division 2 (commencing with Section 500) of the Business and Professions Code, or any initiative act referred to therein, in type style and size comparable to those of all other provider categories, and shall state under each category that the plan will reimburse subscribers for services of any professional provider of that category duly licensed by the State of California, and, where permitted by Section 10176, that physician referral is required.

(f) In any description, definition, or glossary of medical specialties included in the directory of participating hospitals and professional providers, the plan shall include appropriate definitions of each license category, based on the statutory scope of each license.

(g) No duties imposed by this section shall apply to a plan to the extent that it issues comprehensive health care contracts under subdivision (e) of Section 11493, or contracts which limit payments to services secured by subscribers from providers charging alternative rates under subdivision (h) of Section 11512, nor shall the requirements of this section apply to any documents issued in connection with those contracts.

SEC. 3. Nothing in this act shall be construed so as to affect the application of Section 10176 of the Insurance Code to nonprofit hospital service plans.

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 intention of the proponents of Chapter 559 of the Statutes of 1986 (Assembly Bill 526) is detailed in a letter from the author of Assembly Bill 526 which appears in the Journal of the California State Assembly on page 268, January 16, 1987.

Enactment of Sections 1 and 2 of this act are necessary to eliminate unintended confusion among consumers, health plans, and providers, and to assure the orderly regulation of health plans subject to the jurisdiction of the Department of Insurance. It is therefore necessary that this act take effect immediately as an urgency statute.

CHAPTER 950

An act to add and repeal Section 12306.6 of the Welfare and Institutions Code, relating to in-home supportive services.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 12306.6 is added to the Welfare and Institutions Code, to read:

12306.6. (a) It is the intent of the Legislature that the County of Santa Clara voluntarily conduct a special pilot project to determine the need to screen prospective providers for prior criminal convictions which may pose a risk to in-home supportive services applicants' or recipients' health and safety. The following conditions shall apply to the special pilot project:

(1) The Santa Clara County Welfare Department shall be responsible for conducting a criminal records clearance of a prospective provider of in-home supportive services. The county welfare department shall obtain fingerprints of a provider for submission to the Department of Justice and shall obtain a signed declaration under penalty of perjury from the provider regarding any prior criminal convictions. The county welfare department, upon obtaining the fingerprints, shall secure from the Department of Justice information of only convictions from the state summary criminal history information to determine whether the prospective employee has ever been convicted of a crime specified in Section 220, subdivision (1), (2), (3), or (4) of Section 261, or Section 264.1, 267, 288a, or 289 of the Penal Code, or of a felony or three or more misdemeanors which are crimes of violence as defined in subdivision (g) of Section 11105.3 of the Penal Code, or of any crime which bears directly upon the individual's fitness to perform his or her duties

pursuant to Section 12300. Any statement requested by the local county welfare department of an applicant pertaining to his or her state summary criminal history information shall remain confidential unless confidentiality is waived by the employee. Fingerprints of the provider shall be submitted to the Department of Justice within 20 days of employment by a contract agency described in Section 12302.1, or within 20 days of being placed on a county-maintained list or registry of providers, or within 20 days of receiving a request from an applicant or recipient pursuant to paragraph (4). If the prospective provider was employed, or resided, out of the state, two fingerprint cards shall be submitted to the Department of Justice for processing.

(2) Every contractor employed by the county pursuant to Section 12302.1 shall participate in the pilot project and refer all new prospective providers to the county welfare department for a criminal records clearance. The contractor may hire a provider for whom a criminal records clearance is pending, subject to conditions imposed by this section and any other requirements of the pilot project.

(3) The pilot county shall conduct a criminal records clearance for any new prospective provider who is added to a county-maintained list or registry of persons who wish to be referred to an in-home supportive services applicant or recipient for possible employment. The county may make referrals from the list or registry while the criminal records clearance is pending, provided that the applicant or recipient of in-home supportive services is informed of this fact.

(4) Any applicant for, or recipient of, in-home supportive services may request that the pilot county conduct a criminal records clearance on any new prospective provider under consideration for employment.

(b) In the case of prospective providers seeking employment with a contract agency, the cost of securing the criminal records clearance information and fingerprints on new applicants shall be borne by the contractor. The costs of securing the criminal records clearance and fingerprints for other providers shall be borne by the pilot county. No in-home supportive services funds used for providing such services shall be used to defer the costs of the fingerprinting and criminal records check completed pursuant to this section.

(c) If it is determined by the county welfare department, on the basis of the fingerprints submitted to the Department of Justice, that the provider has been convicted of an offense specified in Section 220, subdivision (1), (2), (3), or (4) of Section 261, or Section 264.1, 267, 288a, or 289 of the Penal Code, or of a felony or three or more misdemeanors which are crimes of violence as defined in subdivision (g) of Section 11105.3 of the Penal Code or of any crime which bears directly upon the individual's fitness to perform his or her duties, the department shall notify the public or private agency or individual recipient of services to deny employment or to terminate employment, as the case may be, and the following actions shall be

taken as appropriate:

(1) If the provider is employed by a contract agency, the county welfare department shall notify the contractor to act immediately to terminate the person's employment and prevent the person from providing in-home supportive services. The director of the county welfare department may subsequently grant an exemption pursuant to subdivision (e).

(2) If the provider is listed on a county-maintained list or registry, the county shall immediately remove the provider's name from the list or registry and shall not refer the provider to any applicant or recipient. Any applicant or recipient to whom the provider has been referred shall be notified of removal of the provider's name from the list or registry. The director of the county welfare department may subsequently grant an exemption pursuant to subdivision (e).

(3) If the criminal records clearance was done at the request of an applicant or recipient pursuant to paragraph (4) of subdivision (a), the county welfare department shall immediately notify the applicant or recipient that the criminal records check showed one or more prior convictions for which the provider could not be listed on a county-maintained list or registry. The notification shall also include whether an exemption would be possible pursuant to subdivision (e).

(d) For purposes of the pilot project, the definition and procedures related to convictions shall be the same as described in subdivision (d) of Section 1569.17 of the Health and Safety Code, relating to residential facilities for the elderly.

(e) After review of the record, the county may grant an exemption from denial of employment if the department has substantial and convincing evidence to support a reasonable belief that the person convicted of the crime is of such good character as to justify granting an exemption.

(f) Neither the County of Santa Clara nor the state shall incur any liability for the conduct of the special pilot project pursuant to this section.

(g) This section shall not apply to those employers of recipients of services who receive payments for in-house supportive services in advance of those services being provided, unless the recipient of services requests a fingerprint and criminal records check to be completed on a prospective employee.

(h) Santa Clara County shall report to the Legislature, by July 1, 1989, on the results of the pilot project. The report shall include statistical data on the number of prospective providers who have a criminal record, the types of convictions, the number of waivers, the number of applicants for or recipients of in-home supportive services who requested criminal record checks, the number of criminal record checks made in connection with the contractor's potential providers and the number of criminal record checks made prior to potential providers' names being placed on the county's referral list or registry. The report shall also include an account of any reports

of abuse, neglect, or exploitation alleged to have been made against an applicant for, or recipient of, in-home supportive services by a provider and the criminal record, if any, of that provider. The report shall further include information on whether or not any adverse consequences resulted from allowing providers to work for contract agencies or to be placed on a county-maintained list or registry prior to receiving the results of the criminal records clearance. Finally, the report shall present an evaluation of the pilot project and recommendations regarding future statewide use of criminal record checks in the in-home supportive services program.

(i) This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1990, deletes or extends that date.

CHAPTER 951

An act to amend Section 99301.5 of, and to add Sections 99234.1 and 99301.6 to, the Public Utilities Code, relating to transportation.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 99234.1 is added to the Public Utilities Code, to read:

99234.1. Notwithstanding any other provision of this article or Article 4 (commencing with Section 99260), the Orange County Transportation Commission may allocate funds from either the Orange County Unified Transportation Trust, as defined in Section 99301.6, or from the principal upon which the interest is accruing to the Department of Transportation for construction of high-occupancy vehicle lanes within freeways in the county. In the event high-occupancy vehicle lanes constructed with the funds are subsequently converted to mixed flow use, the local transportation fund shall be reimbursed through the State Transportation Improvement Program process the amount of funds provided to the department for construction of the lanes pursuant to this section.

SEC. 2. Section 99301.5 of the Public Utilities Code is amended to read:

99301.5. Notwithstanding Sections 99232, 99233, and 99301, the Orange County Transportation Commission may direct the transportation planning agency to allocate interest accruing from money retained for the development of transit in the local transportation fund of the County of Orange, to the County of Orange, to cities within the county, to the Department of Transportation, to the Orange County Transit District, and to the Orange County Transportation Commission to expend for purposes

within the County of Orange, as determined by the Orange County Transportation Commission, which could be funded by motor vehicle fuel taxes pursuant to Section 1 of Article XIX of the California Constitution. The commission, when determining the purposes for which the money is to be expended, shall ensure that, to the extent possible, at least one half of the money is allocated to local street and road projects.

SEC. 3. Section 99301.6 is added to the Public Utilities Code, to read:

99301.6. Interest accruing pursuant to Section 99301.5 shall continue to be allocated under that section for as long as there is a balance of money retained for the development of transit in the local transportation fund of the County of Orange. For this purpose, the amount of the balance retained for the development of transit in the local transportation fund shall be determined by the Orange County Transportation Commission with the concurrence of the Orange County Transit District prior to the beginning of each fiscal year.

After the allocation instructions have been received from the transportation planning agency, the interest accruing shall be deposited in a separate account maintained by the Orange County Treasurer, which shall be known as the Orange County Unified Transportation Trust. Thereafter, the Orange County Transportation Commission shall issue allocation instructions on the balance in the Orange County Unified Transportation Trust.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 Article XIII B of the California Constitution 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 952

An act to add Sections 12749.8, 12749.81, and 12749.82 to the Water Code, relating to flood protection.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987]

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

SECTION 1. Section 12749.8 is added to the Water Code, to read:

12749.8. The project for flood protection measures on the Guadalupe River in Santa Clara County is adopted and authorized substantially in accordance with the plans and subject to the conditions of the Report of the Board of Engineers for Rivers and Harbors dated June 29, 1986, as authorized by Section 401(b) of the Water Resources Development Act of 1986 (Public Law 99-662), at an estimated cost to the state of the sum that may be appropriated

for state cooperation by the Legislature upon the recommendation and advice of the department. The department may pay 50 percent of the nonfederal capital costs of the recreation and fish and wildlife enhancement features of the project.

SEC. 2. Section 12749.81 is added to the Water Code, to read:

12749.81. The Santa Clara Valley Water District shall give assurances satisfactory to the Secretary of the Army that local cooperation required by the Report of the Board of Engineers for Rivers and Harbors dated June 29, 1986, will be furnished by the district in connection with the project for flood control adopted and authorized in Section 12749.8.

SEC. 3. Section 12749.82 is added to the Water Code, to read:

12749.82. The Santa Clara Valley Water District, in conjunction with the Department of the Army, shall execute the plans and project referred to in Section 12749.8 and may make modifications and amendments to the plan as may be necessary to execute them for purposes of Chapter 1 (commencing with Section 12570) and this chapter.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 953

An act to amend Section 790.07 of the Insurance Code, relating to insurance.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 790.07 of the Insurance Code is amended to read:

790.07. Whenever the commissioner shall have reason to believe that any person has violated a cease and desist order issued pursuant to Section 790.05 or a court order issued pursuant to Section 790.06, after the order has become final, and while the order is still in effect, the commissioner may, after a hearing at which it is determined that the violation was committed, order that person to forfeit and pay to the State of California a sum not to exceed five thousand dollars ($5,000), which may be recovered in a civil action, except that, if the violation is found to be willful, the amount of the penalty may be a sum not to exceed fifty-five thousand dollars ($55,000).

For any subsequent violation of the cease and desist order or of the court order, while any such order is still in effect, the commissioner

may, after hearing, suspend or revoke the license or certificate of that person for a period not exceeding one year; provided, however, no such proceeding shall be based upon the subsequent violation unless the same was committed or continued after the date on which the order imposing the penalty pursuant to the preceding paragraph became final.

The hearings provided by this section shall be conducted in accordance with the Administrative Procedure Act, and the commissioner shall have all the powers granted therein.

The person shall be entitled to have the proceedings and the order of the commissioner therein reviewed by means of any remedy provided by Section 12940 of this code or by said Administrative Procedure Act.

CHAPTER 954

An act to add Sections 4604.5, 5163.5, and 7017.6 to the Civil Code, relating to family law.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 4604.5 is added to the Civil Code, to read:

4604.5. Prior to granting or modifying a custody order in any case in which one or both parents of the child have not appeared either personally or by counsel, the court shall require the parent, petitioner, or other party appearing in the case to submit a certified copy of the child's birth certificate to the court. The court or its designee shall forward the certified copy of the birth certificate to the local police or sheriff's department which shall check with the National Crime Information Center Missing Person System to ascertain whether the child in question has been reported missing or is the victim of an abduction and report thereon to the court. If the custody matter before the court also involves a petition for the dissolution of marriage or the adjudication of paternity rights or duties, this section is applicable only in those cases in which there is no proof of personal service of the petition on the absent parent. For good cause shown, the court may waive the requirements of this section.

SEC. 2. Section 5163.5 is added to the Civil Code, to read:

5163.5. Section 4604.5 is applicable to proceedings pursuant to this title.

SEC. 3. Section 7017.6 is added to the Civil Code, to read:

7017.6. Section 4604.5 is applicable to proceedings pursuant to this part.

SEC. 4. Notwithstanding Section 17610 of the Government Code,

if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 955

An act to amend Section 13108.5 of the Health and Safety Code, and to add Section 4290 to the Public Resources Code, relating to fire safety.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987]

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

SECTION 1. Section 13108.5 of the Health and Safety Code is amended to read:

13108.5. (a) The State Fire Marshal shall adopt, amend, and repeal regulations for roof coverings and openings into the attic areas of buildings in those fire hazard severity zones designated by the Director of Forestry pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code.

The regulations shall be consistent with the rules and regulations adopted by the Commission of Housing and Community Development pursuant to Section 17922 and shall apply to buildings subject to this part located in fire hazard severity zones within state responsibility areas. The regulations shall be enforced by the agency responsible for enforcement of this part within each zone.

The State Fire Marshal shall take into account the rating, reflecting the degree of severity of fire hazard assigned pursuant to Section 4203 of the Public Resources Code for each of the fire hazard severity zones.

The regulations adopted pursuant to this section are applicable to new buildings constructed and to existing buildings when 50 percent or more of the roof area is reroofed pursuant to a building permit when the application for the permit is filed after the effective date of the regulations. When there is no building permit, the regulations are applicable to buildings constructed and to buildings where 50 percent or more of the roof area is reroofed after the effective date of the regulations.

(b) The State Fire Marshal shall report to the Legislature by February 1, 1988, describing the regulations adopted pursuant to

subdivision (a) for roof coverings and openings that are applicable to each of the fire hazard severity zones designated by the Director of Forestry and Fire Protection. The report shall also generally identify the fire hazard severity zones and the agency responsible for enforcement of the regulations within each zone.

SEC. 2. Section 4290 is added to the Public Resources Code, to read:

4290. The board shall adopt regulations implementing minimum fire safety standards related to defensible space which are applicable to state responsibility area lands under the authority of the department. These regulations apply to the perimeters and access to all residential, commercial, and industrial building construction within state responsibility areas approved after July 1, 1989. The board may not adopt building standards, as defined in Section 18909 of the Health and Safety Code, under the authority of this section. As an integral part of fire safety standards, the State Fire Marshal has the authority to adopt regulations for roof coverings and openings into the attic areas of buildings specified in Section 13108.5 of the Health and Safety Code. The regulations apply to the placement of mobile homes as defined by National Fire Protection Association standards. These regulations do not apply where an application for a building permit was filed prior to July 1, 1989, or to parcel or tentative maps or other developments approved prior to July 1, 1989, if the final map for the tentative map is approved within the time prescribed by the local ordinance. The regulations shall include all of the following:

(a) Road standards for fire equipment access.

(b) Standards for signs identifying streets, roads, and buildings.

(c) Minimum private water supply reserves for emergency fire use.

(d) Fuel breaks and greenbelts.

These regulations do not supersede local regulations which equal or exceed minimum regulations adopted by the state.

CHAPTER 956

An act to amend Sections 1255.3, 1269, 1271, 1274.10, 9614, and 15079 of, to repeal Sections 1274 and 1274.9 of, and to amend and renumber Section 1274.5 of, the Unemployment Insurance Code, and to amend Section 11 of Chapter 1217 of the Statutes of 1985, relating to unemployment compensation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 1255.3 of the Unemployment Insurance Code is amended to read:

1255.3. (a) Except as provided by subdivisions (c) and (d), the amount of unemployment compensation benefits, extended duration benefits, and federal-state extended benefits payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which that individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of the individual shall be reduced, but not below zero, by an amount equal to the amount of the pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to that week.

(b) Subdivision (a) shall be operative only during such time as Section 3304 of the Federal Unemployment Tax Act requires that state unemployment insurance laws contain those provisions as a condition of certification of state unemployment insurance laws by the Secretary of Labor.

(c) Subdivision (a) shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if both of the following are met:

(1) The pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period or chargeable employer.

(2) In the case of such a payment not made under the federal Social Security Act or the federal Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), services performed for the employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar periodic payment.

(d) (1) Subdivision (a) shall not apply to any pension, retirement or retired pay, annuity or other similar periodic payment if the individual has made any contribution to the pension, retirement or retired pay, annuity, or other similar periodic payment.

(2) The amendments made to this subdivision during the 1986 portion of the 1985–86 Regular Session shall apply to new claims filed with an effective date beginning on or after January 1, 1987.

(e) The amendments made to subdivision (c) of this section during the 1985 portion of the 1985–86 Regular Session shall apply retroactively to all unemployment compensation benefits, extended duration benefits, and federal-state extended benefits, payable to an individual for any week which begins after November 1, 1980.

SEC. 2. Section 1269 of the Unemployment Insurance Code is

amended to read:

1269. A determination of potential eligibility for benefits under this article shall be issued to an unemployed individual if the director finds that any of the following apply:

(a) The training is authorized by Title III of the federal Job Training Partnership Act or by Chapter 3.5 (commencing with Section 10200) of Part 1 of Division 3.

(b) The training is performance-based and authorized by Division 8 (commencing with Section 15000) or by the federal Job Training Partnership Act (Public Law 97-300).

(c) That all of the following apply:

(1) 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.), or because of a mental or physical disability which prohibits the individual from utilizing existing occupational skills.

(2) One of the substantial causes of the individual's unemployment is a lack of sufficient current demand in the individual's labor market area for the occupational skills for which the individual is fitted by training and experience or current physical or mental capacity 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 seasonal variation in demand in the labor market and the individual has no other skill for which there is current demand.

(3) 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.

(4) The training or retraining course of instruction is one approved by the director and can be completed within one year.

(5) The training or retraining course is a full-time course 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.

(6) The individual can be reasonably expected to complete the training or retraining successfully.

(7) The beginning date of training is more than three years after

the beginning date of training last approved for the individual under this subdivision.

SEC. 3. Section 1271 of the Unemployment Insurance Code is amended to read:

1271. (a) 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, no later than the 16th week of his or her receiving these benefits, 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. The department shall notify every individual who applies for unemployment compensation in this state of his or her opportunity to receive benefits under this article and to receive extended benefits under this article if application is made pursuant to this section.

(b) Any claimant receiving benefits pursuant to subdivision (a) 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.

(c) 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.

(d) To the extent permitted by federal law, benefits payable under any federal unemployment compensation law shall be included as benefits payable under this section.

SEC. 4. Section 1274 of the Unemployment Insurance Code is repealed.

SEC. 5. Section 1274.5 of the Unemployment Insurance Code is amended and renumbered to read:

1274. The director may publish a list of high demand occupations in each labor market area of this state. If a demand occupation is limited to a particular industry, the director may identify the industry of the demand occupation.

SEC. 6. Section 1274.9 of the Unemployment Insurance Code is repealed.

SEC. 7. Section 1274.10 of the Unemployment Insurance Code is amended to read:

1274.10. This article shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before that date, deletes or extends the date.

SEC. 8. Section 9614 of the Unemployment Insurance Code is amended to read:

9614. Notwithstanding any other provision of law, the department shall annually issue the following reports to the Governor and the Legislature:

(a) An evaluation of the Work Incentive Program, the

Employment Preparation Program, the Supported Work program, the California Welfare Skills Training Act, and the California Job Tax Credit program. This report shall be issued by February 1 of each year.

(b) An evaluation of the Job Agent program and the Service Center program. This report shall be issued by December 1 of each year.

(c) An evaluation of the Retraining Benefits program pursuant to Section 15079, the Regional Employment Assessment, Job Search Assistance, and Placement Services for Displaced Workers Act, and the Displaced Worker Education and Training Act program. This report shall be issued by November 1 of each year.

SEC. 9. Section 15079 of the Unemployment Insurance Code is amended to read:

15079. In order to maximize employment and training services to displaced workers, it is the intent of the Legislature that subsistence assistance for workers enrolled in retraining be financed through unemployment insurance funds, in accordance with Article 1.5 (commencing with Section 1266) of Chapter 5 of Part 1 of Division 1. The Employment Development Department shall annually report on program outcomes and estimated costs to the Unemployment Fund for this purpose.

SEC. 10. Section 11 of Chapter 1217 of the Statutes of 1985 is amended to read:

Sec. 11. The Employment Development Department shall refund immediately all benefit overpayment assessments received since March 1, 1984, from the Unemployment Fund and penalties received since March 1, 1984, from the Benefit Audit Fund relating to the pension benefit offset issue.

The Employment Development Department shall utilize the moneys in the Unemployment Fund for refunding all types of unemployment compensation benefits pursuant to this act.

SEC. 11. The Employment Development Department shall review the claim of each deceased person for whom unemployment insurance benefits were denied or reduced because of subdivision (f) of Section 1255.3 of the Unemployment Insurance Code, which is repealed by this act, determine the amount of benefits payable on these claims according to Section 1255.3 of the Unemployment Insurance Code as amended by this act, and make a diligent effort to notify and pay any benefits due to any person or persons entitled to receive these benefits under Section 1341 of the Unemployment Insurance Code.

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to permit individuals suffering the economic hardships which accompany the death of a friend or relative to expeditiously claim unemployment insurance benefits, which, except for the

amendments repealed by this act, would be owed the deceased pursuant to Section 1341 of the Unemployment Insurance Code, it is necessary that this act go into immediate effect.

CHAPTER 957

An act to add Section 11250.8 to the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 11250.8 is added to the Welfare and Institutions Code, to read:

11250.8. If an applicant for, or recipient of, benefits pursuant to this chapter receives one or more educational loans or grants, for purposes of determining availability of income, that person's educational expenses shall not be applied to any educational loans or grants which, under federal or state law, are totally exempt from consideration as income for purposes of determining eligibility for benefits under this chapter.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 958

An act to amend Section 2400 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. The Legislature finds and declares that the intent of the amendments made to Section 2400 of the Vehicle Code by Section 2 of this act is to clarify the responsibility of the Department of the California Highway Patrol as the principal law enforcement

agency with respect to the enforcement of the Vehicle Code or other laws regulating the operation of vehicles and investigation of traffic accidents on state highways constructed as freeways and transit-related facilities located on or along the rights-of-way of those freeways. This bill has no effect on the current and future provision of police services by other law enforcement agencies.

SEC. 2. 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 Division 16.5 (commencing with Section 38000).

The commissioner shall have full responsibility and primary jurisdiction for the administration and enforcement of the provisions and laws, and for the investigation of traffic accidents, on all state highways constructed as freeways, including transit-related facilities located on or along the rights-of-way of those freeways, except facilities of the San Francisco Bay Area Rapid Transit District; 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 within incorporated areas of the state. 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 those laws and ordinances, unless the city council of the city by resolution requests administration and enforcement of those 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.

CHAPTER 959

An act to amend Sections 5536.25 and 6703.1 of the Business and Professions Code, relating to buildings.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 5536.25 of the Business and Professions Code is amended to read:

5536.25. (a) A licensed architect who signs plans, specifications, reports, or documents shall not be responsible for damage caused by subsequent changes to or uses of those plans, specifications, reports, or documents, where the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the licensed architect who originally signed the plans, specifications, reports, or documents, provided that the architectural service rendered by the architect who signed the plans, specifications, reports, or documents was not also a proximate cause of the damage.

(b) The signing of plans, specifications, reports, or documents which relate to the design of fixed works shall not impose a legal duty or responsibility upon the person signing the plans, specifications, reports, or documents to observe the construction of the fixed works which are the subject of the plans, specifications, reports, or documents. However, nothing in this section shall preclude an architect and a client from entering into a contractual agreement which includes a mutually acceptable arrangement for the provision of construction observation services. Nothing contained in this subdivision shall modify the liability of an architect who undertakes, contractually or otherwise, the provision of construction observation services for rendering those services.

(c) "Construction observation services" means periodic observation of completed work to determine general compliance with the plans, specifications, reports, or other contract documents. However, "construction observation services" does not mean the superintendence of construction processes, site conditions, operations, equipment, or personnel, or the maintenance of a safe place to work or any safety in, on, or about the site.

For purposes of this subdivision, "periodic observation" means visits by an architect, or his or her agent, to the site of a work of improvement.

SEC. 2. Section 6703.1 of the Business and Professions Code is amended to read:

6703.1. "Supervision of the construction of engineering structures" means the periodic observation of materials and completed work to determine general compliance with plans, specifications, and design and planning concepts. However, "supervision of the construction of engineering structures" does not include responsibility for the superintendence of construction processes, site conditions, operations, equipment, personnel, or the maintenance of a safe place to work or any safety in, on, or about the site.

For purposes of this subdivision, "periodic observation" means visits by an engineer, or his or her agent, to the site of a work of improvement.

CHAPTER 960

An act to amend Sections 4383 and 4384 of the Civil Code, relating to support.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 4383 of the Civil Code is amended to read:

4383. (a) Notwithstanding Section 4380, a judgment, order, or decree for the payment of child support or family support may be enforced by a writ of execution without prior court approval until five years after the child reaches the age of majority and, thereafter, for amounts that are not more than 10 years overdue on the date of application therefor. A judgment, order, or decree for the payment of spousal support may be enforced by a writ of execution without prior approval for amounts that are not more than 10 years overdue on the date of the application for the writ. Notwithstanding Section 4351, a judgment, order, or decree for the payment of child or spousal support may be enforced against an employee pension benefit plan regardless of whether the plan has been joined as a party to a proceeding under this part. Notwithstanding Section 697.710 of the Code of Civil Procedure, an execution lien created by a levy on the judgment debtor's right to payment of benefits from an employee pension benefit plan to enforce a judgment, order, or decree for the payment of child or spousal support continues until the date the plan has withheld and paid over to the levying officer, as provided in Section 701.010 of the Code of Civil Procedure, the full amount specified in the notice of levy, unless the plan is directed to stop withholding and paying over before that time by court order or by the levying officer.

(b) The application for a writ of execution shall be accompanied by an affidavit stating the total amount due and unpaid that is

authorized to be enforced pursuant to subdivision (a) on the date of the application. If interest on the overdue installments is sought, the affidavit shall state the total amount of the interest and the amount of each due and unpaid installment and the date it became due. The affidavit shall be filed in the action and a copy shall be attached to the writ of execution delivered to the levying officer. The levying officer shall serve the copy of the affidavit on the judgment debtor when the writ of execution is first served on the judgment debtor pursuant to a levy under the writ.

(c) A writ of execution pursuant to which a levy is made on the judgment debtor's right to payment of benefits from an employee pension benefit plan under this section shall be returned not later than one year after the date the execution lien expires under subdivision (a).

SEC. 2. Section 4384 of the Civil Code is amended to read:

4384. The lack of diligence for more than the period specified in Section 4383 in seeking enforcement of a judgment, order, or decree of the court made, entered, or enforceable pursuant to this part that requires the payment of money shall be considered by the court in determining whether to permit enforcement of the judgment, order, or decree under Section 4380. In the case of a judgment, order, or decree for the payment of money in installments, the period specified pursuant to Section 4383 runs as to each installment from the date the installment became due.

CHAPTER 961

An act to amend Section 1798.26 of the Civil Code, and to amend Sections 1810, 3103, 12804.1, and 12804.3 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 1798.26 of the Civil Code is amended to read:

1798.26. With respect to the sale of information concerning the registration of any vehicle or the sale of information from the files of drivers' licenses, the Department of Motor Vehicles shall, by regulation, establish administrative procedures under which any person making a request for information shall be required to identify himself or herself and state the reason for making the request. These 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 the 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. These 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 do not apply to any governmental entity, any person who has applied for and has been issued a requester code by the department, or any court of competent jurisdiction.

SEC. 2. Section 1810 of the Vehicle Code is amended to read:

1810. (a) The department may permit inspection of or sell, or both, 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 inspection or sale of the information, including, but not limited to, costs incurred by the department in carrying out 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 inspection or sale of information concerning the registration of any vehicle or of information from the files of drivers' licenses, 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 do not apply to any governmental entity, any person who has applied for and has been issued a requester code by the department or any court of competent jurisdiction.

(c) With respect to the inspection or sale of information from the files of drivers' licenses, the department may require both the full name of the driver and either the driver's license number or date of

birth as identifying points of the record, except that the department may disclose a record without two identifying points if the department determines that the public interest in disclosure outweighs the public interest in personal privacy.

SEC. 3. Section 3103 of the Vehicle Code is amended to read:

3103. (a) No nonresident having in his or her immediate possession a valid driver's license, endorsement, or certificate issued by a foreign jurisdiction of which he or she is a resident permitting the operation of vehicles requiring certification under Section 12804.1 or 12804.3, shall be required to obtain certification under Section 12804.1 or 12804.3, if the Department of Motor Vehicles determines that the law of the foreign jurisdiction pertaining to the license, endorsement, or certificate is at least equivalent to the requirements of this state pertaining to certification under Section 12804.1 or 12804.3.

(b) No employer shall require an employee to obtain certification pursuant to Section 12804.1 or 12804.3, unless the employee's duties upon obtaining the certification include actual operation of vehicles requiring that certification.

SEC. 4. Section 12804.1 of the Vehicle Code is amended to read:

12804.1. (a) Except as provided in subdivision (h) of this section, subdivision (a) of Section 3103, and Section 12804.2, no person shall operate a motor vehicle which is required to display placards or markings pursuant to Section 27903 or which is hauling hazardous waste, as defined in Sections 25115 and 25117 of the Health and Safety Code, unless the person has in his or her possession a driver's license for the appropriate class of vehicle to be driven and a certificate issued by the department to permit the operation of vehicles requiring placards or markings pursuant to Section 27903 and vehicles hauling hazardous waste.

(b) Applicants for that certificate shall be required to submit 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 and submit to a test of the applicant's knowledge and understanding of the provisions of this code, other federal and state laws relating to the transportation of hazardous materials or hazardous waste, and safe driving practices relating to the transportation of hazardous materials pursuant to Section 27903 and the transportation of hazardous waste as provided in rules or regulations of the State Department of Health Services.

(c) The department may accept a certificate of training, as authorized under subdivision (b) of Section 3100, in lieu of the knowledge test required under subdivision (b) of this section, when the certificate of training is issued by an employer of the applicant.

(d) A certificate shall be valid for the operation of any vehicle class for which the person is licensed which is transporting hazardous materials requiring placards pursuant to Section 27903 or which is transporting hazardous waste, as defined in Sections 25115 and 25117 of the Health and Safety Code, provided that the person has in

immediate possession a medical certificate issued within the past two years.

(e) Applicants for a certificate to drive vehicles transporting hazardous materials pursuant to Section 27903 or transporting hazardous waste, as defined in Sections 25115 and 25117 of the Health and Safety Code, shall pay a fee of twelve dollars ($12) to the department.

(f) Renewal of the certificate is subject to Section 12814, as it may apply to a certificate.

(g) Implementation dates for this section may be established by the department by regulation in order to accomplish an orderly certification program.

(h) This section does not apply to any person transporting diesel fuel in an implement of husbandry or a vehicle exempt from registration pursuant to Division 16 (commencing with Section 36000).

SEC. 5. Section 12804.3 of the Vehicle Code is amended to read:

12804.3. (a) Except as provided in subdivision (a) of Section 3103, no person shall operate combinations of vehicles with any tank configuration, which are required to be operated by a class 1 driver and which are transporting bulk liquid loads, unless the person has in his or her possession a certificate required by this section.

(b) Applicants for a certificate pursuant to this section shall pay a fee of twelve dollars ($12) to the department.

(c) Applicants for the certificate shall be required to meet all licensing requirements for a class 1 license issued pursuant to Section 12804 and shall be required to submit to a test of the applicant's knowledge and understanding of the provisions of this code and safe driving practices relating to the operation of combinations of vehicles with any tank configuration transporting bulk loads.

(d) The department may accept a certificate of training, as authorized under subdivision (b) of Section 3100, in lieu of the knowledge test required under subdivision (c) of this section, when the certificate of training is issued by an employer of the applicant.

(e) Renewal of the certificate is subject to Section 12814, as it may apply to a certificate.

(f) Implementation dates for this section may be established by the department by regulation in order to accomplish an orderly certification program.

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 ensure that adequate safeguards are maintained for the driving records of persons who are the subject of information requests, it is necessary that this act take effect immediately.

CHAPTER 962

An act to add Section 1098 to the Government Code, relating to public officers and employees.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 1098 is added to the Government Code, to read:

1098. (a) Any current public officer or employee who willfully and knowingly discloses for pecuniary gain, to any other person, confidential information acquired by him or her in the course of his or her official duties, or uses any such information for the purpose of pecuniary gain, is guilty of a misdemeanor.

(b) As used in this section:

(1) "Confidential information" means information to which all of the following apply:

(A) At the time of the use or disclosure of the information, the information is not a public record subject to disclosure under the Public Records Act.

(B) At the time of the use or disclosure of the information, the disclosure is prohibited by (i) a statute, regulation, or rule which applies to the agency in which the officer or employee serves; (ii) the statement of incompatible activities adopted pursuant to Section 19990 by the agency in which the officer or employee serves; or (iii) a provision in a document similar to a statement of incompatible activities if the agency in which the officer or employee serves is a local agency.

(C) The use or disclosure of the information will have, or could reasonably be expected to have, a material financial effect on any investment or interest in real property which the officer or employee, or any person who provides pecuniary gain to the officer or employee in return for the information, has at the time of the use or disclosure of the information or acquires within 90 days following the use or disclosure of the information.

(2) For purposes of paragraph (1):

(A) "Interest in real property" has the definition prescribed by Section 82033.

(B) "Investment" has the definition prescribed by Section 82034.

(C) "Material financial effect" has the definition prescribed by Sections 18702 and 18702.2 of Title 2 of the California Administrative Code, as those sections read on September 1, 1987.

(3) "Pecuniary gain" does not include salary or other similar compensation from the officer's or the employee's agency.

(c) This section shall not apply to any disclosure made to any law enforcement agency, nor to any disclosure made pursuant to

Sections 10542 and 10543.

(d) This section is not intended to supersede, amend, or add to subdivision (b) of Section 8920 regarding prohibited conduct of Members of the Legislature.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 963

An act to amend Section 8690.6 of the Government Code, relating to disaster relief.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 8690.6 of the Government Code is amended to read:

8690.6. (a) There is hereby established in the Reserve for Economic Uncertainties a Disaster Response-Emergency Operations Account. Notwithstanding Section 13340, moneys in the account are continuously appropriated, without regard to fiscal years, for allocation by the Director of Finance, upon an order of the Governor, to state or local agencies for costs, including the cost of providing disaster victim assistance, incurred related to emergencies declared by the Governor. For purposes of this section, an "emergency" means a fire, flood, storm, tidal wave, earthquake, or similar public calamity.

(b) The Director of Finance shall allocate funds pursuant to this section in accordance with Section 27.00 of the annual Budget Act, except that the allocations may be made 30 days or less after the director's notification pursuant to subdivision (b) of that section.

(c) Funds allocated to state or local agencies under this section may be used to provide the state or local agency's share of the cost of participation in federal disaster relief programs, but shall not be used to supplant federal funds otherwise available in the absence of state financial relief or to pay any expense which is eligible for federal funding. The Department of Finance may establish standards for the allocation of funds to local agencies. Notwithstanding the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, these standards, if promulgated, shall not be subject to the review and approval of the Office of Administrative Law.

(d) The amount of financial assistance provided to an individual, business, or governmental entity under this section, or pursuant to any other program of state-funded disaster assistance, shall be deducted from sums received in payment of damage claims asserted against the state, its agents, or employees, for causing or contributing to the effects of the proclaimed disaster.

(e) For purposes of this section, "local agency" means a local agency or a school entity, as defined in subdivisions (a) and (f), respectively, of Section 95 of the Revenue and Taxation Code.

(f) The Legislature finds and declares that the amendments made to subdivision (c) of this section by Chapter 16 of the Statutes of 1986 and the amendments made to that subdivision during the 1987 portion of the 1987–88 Regular Session of the Legislature, declare the intent of the Legislature at the time when this section was originally added to this code by Chapter 1562 of the Statutes of 1985.

(g) This section shall become inoperative on June 30, 1988, and, as of January 1, 1989, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1989, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 8690.6 of the Government Code is amended to read:

8690.6. (a) There is hereby established in the Reserve for Economic Uncertainties a Disaster Response-Emergency Operations Account. Notwithstanding Section 13340, moneys in the account are continuously appropriated, without regard to fiscal years, for both of the following:

(1) For allocation by the Director of the Office of Emergency Services, upon an order of the Governor and approval by the Director of Finance, for reimbursement of extraordinary emergency or disaster response operation costs incurred by state-requested local agencies as a result of a state of emergency proclamation by the Governor.

(2) For allocation by the Director of Finance for the reimbursement of extraordinary emergency or disaster response operation costs incurred by state agencies as a result of a state of emergency proclamation by the Governor.

(b) The funds shall be allocated subject to the conditions of this section and in accordance with Section 27.00 of the annual Budget Act, except that the allocations may be made 30 days or less after notification of the Legislature pursuant to subdivision (b) of that section.

(c) Funds allocated to state and local agencies pursuant to the requirements of this section may be used to provide reimbursement to state and local agencies for extraordinary costs incurred for emergency or disaster response operations resulting from a state of emergency proclamation by the Governor. No funds allocated under this section shall be used to supplant federal funds otherwise available in the absence of state financial relief. The Office of

Emergency Services shall establish standards and instructions for the receipt and processing of state and local agency claims. Notwithstanding the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, these standards shall not be subject to the review and approval of the Office of Administrative Law. All funds provided pursuant to this section shall be subject to audit by the Controller.

(d) The amount of financial assistance provided to an individual, business, or governmental entity under this section, or pursuant to any other program of state-funded disaster assistance, shall be deducted from sums received in payment of damage claims asserted against the state, its agents, or employees, for causing or contributing to the effects of the proclaimed disaster.

(e) The Legislature finds and declares that the amendments made to subdivision (c) of this section by Chapter 16 of the Statutes of 1986 declare the intent of the Legislature at the time when this section was originally added to this code by Chapter 1562 of the Statutes of 1985.

(f) This section shall become inoperative on June 30, 1993, and, as of January 1, 1994, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1994, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 2 of this bill incorporates amendments to Section 8690.6 of the Government Code proposed by both this bill and SB 1095. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 8690.6 of the Government Code, and (3) this bill is enacted after SB 1095, in which case Section 1 of this bill shall not become operative.

CHAPTER 964

An act to amend Sections 4721 and 4725 of the Civil Code, relating to family law.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 4721 of the Civil Code is amended to read:

4721. In determining the ability of parents to pay the mandatory minimum child support award and to calculate the actual monthly payments to be made by each parent, all of the following provisions apply:

(a) The annual gross income of each parent shall be determined and then adjusted to obtain the annual net disposable income. To determine and apportion the mandatory minimum child support award, as defined in Section 4722, the court shall also consider, to the

extent consistent with the best interests of the child or children, the earning capacity of either or both parents. The annual gross income means income from whatever source derived, except as specified in subdivision (b), and includes, but is not limited to, all of the following:

(1) Income such as commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, and spousal support actually received from a person not a party to the order.

(2) Income from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.

(3) To the extent that income derived from paragraphs (1) and (2) is insufficient to produce a mandatory minimum child support award at the AFDC standard for the same number of children, upon the request of either party, the court may consider investment assets of either or both parties which could be liquidated. To determine and apportion the mandatory minimum child support award at the AFDC level, the court shall also consider, to the extent consistent with the best interests of all of the children, the earning capacity of either or both parents.

(b) Annual gross income shall not include any income derived from child support payments actually received and income derived from any public assistance program, eligibility for which is based on a determination of need.

(c) The annual net disposable income of each parent shall be computed by deducting from his or her annual gross income the actual amounts attributable only to the following items, after which the remainder shall be adjusted to reflect the monthly net disposable income of each parent:

(1) The state and federal income taxes attributed to the parent. Federal and state income tax deductions shall bear an accurate relationship to the tax status of the parties (that is, single, married, married filing separately, or head of household) and number of dependents.

(2) Deductions attributed to the employee's contribution or the self-employed worker's contribution pursuant to the Federal Insurance Contributions Act (FICA), or an amount not to exceed that allowed under FICA for persons not subject to FICA, provided that the deducted amount is used to secure retirement or disability benefits for the parent.

(3) Deductions for mandatory union dues and retirement benefits, provided that they are required as a condition of employment.

(4) Deductions for health insurance premiums and state disability insurance premiums.

(5) Any child or spousal support actually being paid by the parent pursuant to a court order, to or for the benefit of any person who is

not a subject of the award to be established by the court. In the absence of a court order, any child support actually being paid, not to exceed the amount established by the county support guidelines applicable in the county of the child's residence, for a natural or adopted child or children of the parent not residing in that parent's home, who is not the subject of the award to be established by the court, and for whom the parent has a duty of support.

(d) For the purposes of verifying total gross income and amounts allowed for deductions, copies of the parents' state income tax returns for the previous two years, copies of present wage stubs, and any other relevant documents shall be subject to discovery by the parties. Further, the court may require copies of the parents' tax returns for the previous two years, copies of present wage stubs, and such other documentation as it may deem necessary, including a current income and expense declaration in the form prescribed by the Judicial Council for family law matters.

(e) For the purpose of determining the parent's annual gross income, in calculating the mandatory minimum child support award, the court shall not include any portion of the earned income and income derived from the separate property of the current spouse or the nonmarital partner of either parent. This requirement does not apply to a child support obligation arising from the marriage between the obligated parents.

(f) The court shall inquire of each party as to the total number of minor children he or she is legally obligated to support.

SEC. 2. Section 4725 of the Civil Code is amended to read:

4725. In the event that a parent is experiencing extreme financial hardship due to justifiable expenses resulting from the circumstances enumerated in this section, upon the request of a party, the court may allow such income deductions as may be necessary to accommodate those circumstances, in addition to the deductions specified in subdivision (c) of Section 4721.

(a) Circumstances evidencing hardship include the extraordinary health expenses for which the parent is financially responsible, and uninsured catastrophic losses.

(b) Circumstances evidencing hardship also include the minimum basic living expenses of either parent's natural or adopted dependent minor children from other marriages or relationships who reside with the parent. The court, upon its own motion or upon the request of a party, may allow such income deductions as are necessary to accommodate these expenses.

(c) If deductions for hardship expenses are allowed, the court shall state on the record the reasons supporting the deductions, cite the documentation of the underlying facts and circumstances, and specify the amount of deductions allowed. Whenever possible, the court shall specify the duration that any deduction shall be in effect.

(d) Upon considering whether to allow a deduction under this section, and in determining the amount of any such deduction, the court shall be guided by the goals set forth in the expression of

legislative intent set forth in this chapter.

(e) The court shall not order a child support award that would reduce a parent's net income to an amount less than that established for the needs of one person by Section 11452 of the Welfare and Institutions Code, as annually adjusted by Section 11453 of that code.

CHAPTER 965

An act to amend Sections 4430, 4432, and 4439 of the Business and Professions Code, relating to pharmacy.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 4430 of the Business and Professions Code is amended to read:

4430. The board shall contract with a pharmacists' professional association with statewide representation for the following purposes:

(a) To coordinate the voluntary participation in the program.

(b) To recruit volunteer intervenors and to train them.

(c) To promote the program within the profession and to the public.

(d) To establish and maintain a 24-hour statewide toll-free telephone "hotline" service.

(e) To report to the board on these functions.

SEC. 2. Section 4432 of the Business and Professions Code is amended to read:

4432. The functions of the Employee Assistance Program shall include the following:

(a) To evaluate those pharmacists who request participation in the program according to the guidelines prescribed by the board.

(b) To review and designate those treatment facilities and services to which pharmacists in the program may be referred.

(c) To receive and review information concerning a pharmacist's participation in the program.

(d) To assist pharmacists' professional associations in publicizing the program.

(e) To prepare reports to be submitted to the board.

SEC. 3. Section 4439 of the Business and Professions Code is amended to read:

4439. This article shall be operative until January 1, 1992, and on that date is repealed, unless a later enacted statute deletes or extends that date.

CHAPTER 966

An act to amend Section 11272 of the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 11272 of the Government Code is amended to read:

11272. In determining or redetermining the fair share, the State Board of Control may consider the factors of cost distribution and cost estimation as it deems necessary, except that, as to the proceeds of those taxes, the use of which is restricted by Article XIX of the California Constitution, the State Board of Control shall assess only those administrative costs ascertained as being necessarily incurred in connection with highway purposes as set forth in the article, and except that, as to funds collected pursuant to Section 221 of the Food and Agricultural Code, the State Board of Control shall assess only those administrative costs incurred in connection with the enforcement of the law under which the funds were derived.

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

In order for the provisions of this act to apply to the 1987–88 fiscal year, and so facilitate the orderly determination of administrative costs, it is necessary that this act take effect immediately.

CHAPTER 967

An act to add Sections 69510.5 and 69510.6 to the Government Code, relating to courts.

[Approved by Governor September 22, 1987 Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 69510.5 is added to the Government Code, to read:

69510.5. Notwithstanding any other provision of law, a majority of the judges of the Orange County Superior Court may, upon a finding that no suitable additional facilities exist in the county seat or where municipal courts hold sessions, order sessions of the court to be held

prior to January 1, 1990, at any location within the county.

SEC. 2. Section 69510.6 is added to the Government Code, to read:

69510.6. Notwithstanding any other provision of law, a majority of the judges of the San Mateo County Superior Court may, upon a finding that no suitable additional facilities exist in the county seat or where municipal courts hold sessions, order sessions of the court to be held prior to January 1, 1990, at Crestmoor High School in San Bruno, California.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 968

An act relating to public employees.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. The Board of Administration of the Public Employees' Retirement System shall conduct a study on the cost of contracting with one or more health benefit carriers or plans which would provide state annuitants with vision care benefits comparable to those provided state employees under plans contracted for by the Department of Personnel Administration. The board shall prepare and submit a report on the study to the Legislature by April 1, 1988.

CHAPTER 969

An act to amend Section 675 of the Harbors and Navigation Code, and to amend Section 6302 of, and to add Section 6302.1 to, the Public Resources Code, relating to vessels.

[Approved by Governor September 22, 1987 Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 675 of the Harbors and Navigation Code is amended to read:

675. (a) Any peace officer, as described in Section 663, any employee or officer of the State Lands Commission designated by

the State Lands Commission, or any lifeguard or marine safety officer employed by a city, county, or district while engaged in the performance of official duties, may remove a vessel from a public waterway under any of the following circumstances:

(1) When any vessel is left unattended and is moored, docked, beached, or made fast to land in such a position as to obstruct the normal movement of traffic or in such a condition as to create a hazard to other vessels using the waterway, to public safety, or to the property of another.

(2) When any vessel is found upon a waterway and report has previously been made that the vessel has been stolen or complaint has been filed and a warrant thereon issued charging that the vessel has been embezzled.

(3) When the person or persons in charge of a vessel are by reason of physical injuries or illness incapacitated to such an extent as to be unable to provide for its custody or removal.

(4) When an officer arrests any person operating or in control of a vessel for an alleged offense, and the officer is by any provision of this code or other statute required or permitted to take, and does take, the person arrested before a magistrate without unnecessary delay.

(5) When any vessel seriously interferes with, or otherwise poses a critical and immediate danger to navigation or to the public health, safety, or welfare.

(b) Costs incurred by a public entity pursuant to removal of vessels under subdivision (a) may be recovered through appropriate action in the courts of this state.

SEC. 2. Section 6302 of the Public Resources Code is amended to read:

6302. The commission may eject from any tide and submerged lands, beds of navigable channels, streams, rivers, creeks, lakes, bays, and inlets under its jurisdiction, any person, firm, or corporation, trespassing upon any such lands, through appropriate action in the courts of this state. The commission may recover costs of ejectment through the legal action.

SEC. 3. Section 6302.1 is added to the Public Resources Code, to read:

6302.1. (a) The commission may remove from areas under its jurisdiction any vessel, boat, raft, or other similar watercraft which is left unattended and is moored, docked, beached, or made fast to land in a position as to obstruct the normal movement of traffic or in a condition as to create a hazard to other vessels using a waterway, to public safety, or to the property of another.

(b) The commission may remove from areas under its jurisdiction any vessel, boat, watercraft, raft, or other similar obstruction which seriously interferes with, or otherwise poses a critical and immediate danger to navigation or to the public health, safety, or welfare.

(c) Through appropriate action in the courts of this state, the commission may remove or destroy any vessel, boat, watercraft, raft,

or other similar obstruction which hinders navigation or otherwise creates a public nuisance in areas under the commission's jurisdiction.

(d) The commission may recover costs incurred in removal actions undertaken pursuant to this section through appropriate action in the courts of this state.

(e) For purposes of this section, "appropriate action" means any cause of action available at law or in equity.

CHAPTER 970

An act to amend Sections 11350, 11351, 11352, 11353, 11354, and 11355 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 22, 1987 Filed with Secretary of State September 23, 1987]

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

SECTION 1. Section 11350 of the Health and Safety Code is amended to read:

11350. (a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b), (c), or (g) of Section 11055, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

(b) Except as otherwise provided in this division, every person who possesses any controlled substance specified in subdivision (e) of Section 11054 shall be punished by imprisonment in the county jail for not more than one year or in the state prison.

SEC. 2. Section 11351 of the Health and Safety Code is amended to read:

11351. Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b), (c), or (g) of Section 11055, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment in the state prison for two, three, or four years.

SEC. 3. Section 11352 of the Health and Safety Code is amended to read:

11352. Except as otherwise provided in this division, every

person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b), (c), or (g) of Section 11055, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison for three, four, or five years.

SEC. 4. Section 11353 of the Health and Safety Code is amended to read:

11353. Every person 18 years of age or over who in any voluntary manner solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate any provision of this chapter or Section 11550 with respect to (1) a controlled substance which is specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b), (c), or (g) of Section 11055, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, who hires, employs, or uses a minor to unlawfully transport, carry, sell, give away, prepare for sale, or peddle any such controlled substance, or who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, any such controlled substance to a minor shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

SEC. 5. Section 11354 of the Health and Safety Code is amended to read:

11354. (a) Every person under the age of 18 years who in any voluntary manner solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate any provision of this chapter or Section 11550, who hires, employs, or uses a minor to unlawfully transport, carry, sell, give away, prepare for sale, or peddle (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b), (c), or (g) of Section 11055, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, or who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, any such controlled substance to a minor shall be punished by imprisonment in the state prison.

(b) This section is not intended to affect the jurisdiction of the juvenile court.

SEC. 6. Section 11355 of the Health and Safety Code is amended to read:

11355. Every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (13), (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b), (c), or (g) of Section 11055, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug to any person, or who offers, arranges, or negotiates to have any such controlled substance unlawfully sold, delivered, transported, furnished, administered, or given to any person and who then sells, delivers, furnishes, transports, administers, or gives, or offers, arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid, substance, or material in lieu of any such controlled substance shall be punished by imprisonment in the county jail for not more than one year, or in the state prison.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 971

An act to amend Section 13510 of, and to add Section 13525 to, the Penal Code, relating to crimes.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 13510 of the Penal Code is amended to read:

13510. (a) For the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt, and may, from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness, which shall govern the recruitment of any city police officers, peace officer members of a county sheriff's office, marshals or deputy marshals of a municipal court, reserve officers as defined in subdivision (a) of Section 830.6, policemen of a district authorized by statute to maintain a police department, regularly employed and paid inspectors and investigators of a district attorney's office as defined in Section 830.1 who conduct criminal investigations, or peace officer members of a district, in any city, county, city and county, or district receiving state aid pursuant to this chapter, and shall adopt, and may, from time to time amend, rules establishing minimum standards for training of

city police officers, peace officer members of county sheriff's offices, marshals or deputy marshals of a municipal court, reserve officers as defined in subdivision (a) of Section 830.6, policemen of a district authorized by statute to maintain a police department, regularly employed and paid inspectors and investigators of a district attorney's office as defined in Section 830.1 who conduct criminal investigations, and peace officer members of a district which shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter. All such rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1, of Division 3 of Title 2 of the Government Code.

(b) The commission shall conduct research concerning job-related educational standards and job-related selection standards, to include vision, hearing, physical ability, and emotional stability. Job-related standards which are supported by this research shall be adopted by the commission prior to January 1, 1985, and shall apply to those peace officer classes identified in subdivision (a). The commission shall consult with local entities during the conducting of related research into job-related selection standards.

(c) For the purpose of raising the level of competence of local public safety dispatchers, the commission shall adopt, and may, from time to time amend, rules establishing minimum standards relating to the recruitment and training of local public safety dispatchers having a primary responsibility for providing dispatching services for local law enforcement agencies described in subdivision (a), which standards shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter. All such rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1, of Division 3, of Title 2 of the Government Code. As used in this section, "primary responsibility" refers to the performance of law enforcement dispatching duties for a minimum of 50 percent of the time worked within a pay period.

(d) Nothing in this section shall prohibit a local agency from establishing selection and training standards which exceed the minimum standards established by the commission.

SEC. 2. Section 13525 is added to the Penal Code, to read:

13525. Any city, county, city and county, or district which desires to receive state aid pursuant to this chapter for the training of regularly employed and paid local public safety dispatchers, as described in subdivision (c) of Section 13510, shall include that request for aid in its application to the commission pursuant to Sections 13522 and 13523.

CHAPTER 972

An act to amend Sections 1797.97 and 1798.180 of the Health and Safety Code, relating to health.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 1797.97 of the Health and Safety Code is amended to read:

1797.97. "Poison control center" or "PCC" means a hospital-based facility or other facility which, as a minimum, provides information and advice regarding the management of individuals who have or may have ingested or otherwise been exposed to poisonous or possibly toxic substances, and which has been designated by the Emergency Medical Services Authority according to the standards prescribed by this division.

SEC. 2. Section 1798.180 of the Health and Safety Code is amended to read:

1798.180. (a) The authority shall establish minimum standards for the operation of poison control centers.

(b) The authority shall establish geographical service areas and criteria for designation of regional poison control centers. The authority may designate poison control centers which have met the standards established pursuant to subdivision (a), in accordance with the criteria adopted pursuant to this subdivision.

(c) No person or persons, business, agency, organization, or other entity, whether public or private, shall hold itself out as providing a poison advice service or use the term poison control center, poison advice center, or any other term which implies that it is qualified to provide advice on the treatment or handling of poisons in its advertising, name, or in printed materials and information it furnishes to the general public unless that entity meets one of the following conditions:

(1) Has been designated as a poison control center by the authority.

(2) Is a company or organization which provides a poison information service for products or chemicals which it manufactures or distributes.

(d) Nothing in this section shall prohibit a qualified health care professional, within his or her level of professional expertise, from providing advice regarding poisoning or poisons to his or her patient or patients upon request or whenever he or she deems it warranted in the exercise of his or her professional judgment, as otherwise permitted by law.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the

only costs 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 973

An act to add Section 9884.75 to the Business and Professions Code, and to add Section 753 to the Insurance Code, relating to insurance.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 9884.75 is added to the Business and Professions Code, to read:

9884.75. It is unlawful for any automobile repair dealer to offer to any insurance agent, broker, or adjuster any fee, commission, profit-sharing, or other form of direct or indirect consideration for referring an insured to that automobile repair dealer for vehicle repairs covered under a policyholder's automobile physical damage coverage or automobile collision coverage.

SEC. 2. Section 753 is added to the Insurance Code, to read:

753. (a) It is unlawful for any insurance agent or broker, or any insurance solicitor employed thereby, to receive any financial benefit from an automobile repair facility or any other form of direct or indirect consideration from any person for referring insureds to that person or that person's designee for vehicle repairs covered under automobile comprehensive coverage, property damage coverage, or automobile collision coverage, of an insurance policy issued through the insurance agent or broker or by an insurer represented by the insurance agent.

(b) Subdivision (a) applies with respect to commercial and noncommercial policies of automobile insurance.

(c) For purposes of this section, "financial benefit" means the receiving of any commission or gratuity, discount on repair costs, free repairs, or employment by a repair facility.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 974

An act to add Section 17537.6 to the Business and Professions Code, relating to money judgments.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 17537.6 is added to the Business and Professions Code, to read:

17537.6. (a) It is unlawful for any person to make any untrue or misleading statements in any manner in connection with the offering or performance of a homestead filing service. For the purpose of this section, an "untrue or misleading statement" means and includes any representation that any of the following is true:

(1) The preparation or recordation of a homestead declaration will in any manner prevent the forced sale of a judgment debtor's dwelling.

(2) The preparation or recordation of a homestead declaration will prevent the foreclosure of a mortgage, deed of trust, or mechanic's lien.

(3) Any of the provisions relating to the homestead exemption set forth in Article 4 (commencing with Section 704.710) of Chapter 4 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure are available only to persons who prepare or record a homestead declaration.

(4) A homestead declaration is in any way related to the obtaining of any applicable homeowner's exemption to real property taxes.

(5) The preparation or recordation of a homestead declaration is required by law in any manner.

(6) The offeror of the homestead filing service has a file or record covering a person to whom a solicitation is made.

(7) The offeror of the homestead filing service is, or is affiliated with, any charitable or public service entity unless the offeror is, or is affiliated with, a charitable organization which has qualified for a tax exemption under Section 501(c)(3) of the Internal Revenue Code.

(8) The offeror of the homestead filing service is, or is affiliated with, any governmental entity. A violation of this paragraph includes, but is not limited to, the following:

(A) The misleading use of any governmental seal, emblem, or other similar symbol.

(B) The use of a business name including the word "homestead" and the word "agency," "bureau," "department," "division," "federal," "state," "county," "city," "municipal," "California," or "United States," or the name of any city, county, city and county, or any governmental entity.

(C) The use of an envelope that simulates an envelope containing a government check, tax bill, or government notice or an envelope which otherwise has the capacity to be confused with, or mistaken for, an envelope sent by a governmental entity.

(b) (1) It is unlawful to offer to perform a homestead filing service without making the following disclosure:

THIS HOMESTEAD FILING SERVICE IS NOT ASSOCIATED WITH ANY GOVERNMENT AGENCY.

YOU DO NOT HAVE TO RECORD A HOMESTEAD DECLARATION.

RECORDING A HOMESTEAD DECLARATION DOES NOT PROTECT YOUR HOME AGAINST FORCED SALE BY A CREDITOR. YOU MAY WISH TO CONSULT A LAWYER ABOUT THE BENEFITS OF RECORDING A HOMESTEAD DECLARATION.

IF YOU WANT TO RECORD A HOMESTEAD, YOU CAN FILL OUT A HOMESTEAD DECLARATION FORM BY YOURSELF, HAVE YOUR SIGNATURE NOTARIZED, AND HAVE THE FORM RECORDED BY THE COUNTY RECORDER.

(2) The disclosure specified in paragraph (1) shall be placed at the top of each page of every advertisement or promotional material disseminated by an offeror of a homestead filing service and shall be printed in 12-point boldface type enclosed in a box formed by a heavy line.

(3) The disclosure specified in paragraph (1) shall be recited at the beginning of every oral solicitation and every broadcast advertisement and shall be delivered in printed form as prescribed by paragraph (2) before the time each person who responds to the oral solicitation or broadcast advertisement is obligated to pay for any service.

(c) In addition to any other service, every offeror of a homestead filing service shall deliver each notarized homestead declaration to the appropriate county recorder for recordation as soon as needed or required by a homestead declarant, but no later than 10 days after the homestead declaration is notarized. The offeror of the homestead filing service shall pay all fees charged in connection with the notarization and recordation of the homestead declaration.

(d) No offeror of a homestead filing service shall charge, demand, or collect any money until after the homestead declaration is recorded. The total amount charged, demanded, or collected by an offeror of a homestead filing service, including all fees for notarization and recordation, shall not exceed twenty-five dollars ($25).

(e) For the purposes of this section, the following definitions apply:

(1) "Homestead filing service" means any service performed or offered to be performed for compensation in connection with the preparation or completion of a homestead declaration or in connection with the assistance in any manner of another person to

prepare or complete a homestead declaration. "Homestead filing service" does not include any service performed by an attorney at law authorized to practice in this state for a client who has retained that attorney or an employee of that attorney acting under the attorney's direction and supervision.

(2) A "homestead declaration" has the meaning described in Article 5 (commencing with Section 704.910) of Chapter 4 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 975

An act to amend Sections 2728, 2770, 2774.3, 2774.5, and 2776 of the Public Resources Code, relating to surface mining.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987]

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

SECTION 1. Section 2728 of the Public Resources Code is amended to read:

2728. "Lead agency" means the city, county, San Francisco Bay Conservation and Development Commission, or the board which has the principal responsibility for approving a surface mining operation or reclamation plan pursuant to this chapter.

SEC. 2. Section 2770 of the Public Resources Code is amended to read:

2770. (a) Except as provided in subdivision (b), no person shall conduct surface mining operations unless a permit is obtained from, and a reclamation plan has been submitted to, and approved by, the lead agency for the operation pursuant to this article.

(b) Any person with an existing surface mining operation who has vested rights pursuant to Section 2776 and who does not have an approved reclamation plan shall submit a reclamation plan to the lead agency not later than March 31, 1988. If a reclamation plan application is not on file by March 31, 1988, the continuation of the surface mining operation is prohibited until a reclamation plan is submitted to the lead agency. For purposes of this subdivision, reclamation plans may consist of all or the appropriate sections of any plans or written agreements previously approved by the lead agency or another agency, together with any additional documents needed to substantially meet the requirements of Sections 2772 and 2773 and

the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, provided that all documents which together are proposed to serve as the reclamation plan are submitted for approval to the lead agency in accordance with this chapter. The lead agency's review of these plans is limited to whether the plan substantially meets the requirements of Sections 2772 and 2773 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774. Plans that are judged to meet the intent of this chapter shall be approved for the purposes of this chapter. Plans that are judged as not substantially meeting the requirements of Sections 2772 and 2773 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774 shall be returned to the operator within 60 days. The operator has 60 days to revise the plan to address identified deficiencies, at which time the revised plan shall be returned to the lead agency for review and approval. Except as specified by subdivision (c), (d), or (f), if plans remain unapproved by July 1, 1990, the continuation of the surface mining operation is prohibited until a reclamation plan is approved by the lead agency.

(c) Any person who, based on the evidence of the record, can substantiate that a lead agency has failed to act according to due process, or has relied on considerations not related to the specific requirements of Sections 2772 and 2773 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774 in reaching a decision to deny approval of a reclamation plan, or has failed to act within a reasonable time of receipt of a completed application, may appeal that action or inaction to the board.

(d) The board may decline to hear an appeal if it determines that the appeal raises no substantial issues related to the lead agency's review pursuant to this section.

(e) Appeals that the board does not decline to hear shall be scheduled and heard at a public hearing within 45 days of the filing of the appeal, or any longer period as may be mutually agreed upon by the board and the person filing the appeal. In hearing an appeal, the board shall only determine whether the plan substantially meets the requirements of Sections 2772 and 2773 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774. A plan judged to meet these requirements shall be approved. A plan judged not to meet these requirements shall be returned to the person filing the appeal with a notice of deficiencies, who shall be granted, once only, a period of 30 days to correct the noted deficiencies and submit the revised plan to the lead agency for review and approval.

(f) Any enforcement action which may be brought against an operator with vested rights pursuant to Section 2776 shall be held in abeyance pending action on an application pursuant to subdivision (b) or the resolution of an appeal filed with the board pursuant to subdivision (c).

SEC. 3. Section 2774.3 of the Public Resources Code is amended

to read:

2774.3. The board shall review lead agency ordinances which establish permit and reclamation procedures to determine whether each ordinance is in accordance with state policy, and shall certify the ordinance as being in accordance with state policy if it adequately meets, or imposes requirements more stringent than, the California surface mining and reclamation policies and procedures established by the board pursuant to this chapter.

SEC. 4. Section 2774.5 of the Public Resources Code is amended to read:

2774.5. (a) If, upon review of an ordinance, the board finds that it is not in accordance with state policy, the board shall communicate the ordinance's deficiencies in writing to the lead agency. Upon receipt of the written communication, the lead agency shall have 90 days to submit a revised ordinance to the board for certification as being in accordance with state policy. The board shall review the lead agency's revised ordinance for certification within 60 days of its receipt. If the lead agency does not submit a revised ordinance within 90 days, the board shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(b) If, upon review of a lead agency's revised ordinance, the board finds the ordinance is still not in accordance with state policy, the board shall again communicate the ordinance's deficiencies in writing to the lead agency. The lead agency shall have a second 90-day period in which to revise the ordinance and submit it to the board for review. If the board again finds that the revised ordinance is not in accordance with state policy or if no revision is submitted, the board shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(c) In any jurisdiction in which the lead agency does not have a certified ordinance, no person shall initiate a surface mining operation unless a reclamation plan has been submitted to, and approved by, the board. Any reclamation plan, approved by a lead agency under the lead agency's ordinance which was not in accordance with state policy at the time of approval, shall be subject to amendment by the board or under the ordinance certified by the board as being in accordance with state policy.

(d) Reclamation plans approved by the board pursuant to this section shall not be subject to modification by the lead agency at a future date but may be amended by the board. Reclamation plans approved by the board shall be remanded to the lead agency upon certification of the lead agency's ordinance, and the lead agency shall approve the reclamation plan as approved by the board, except that a subsequent amendment as may be agreed upon between the operator and the lead agency may be made according to this chapter. No additional public hearing shall be required prior to the lead

agency's approval. Nothing in this section shall be construed as authorizing the board to issue a permit for the conduct of mining operations.

SEC. 5. Section 2776 of the Public Resources Code is amended to read:

2776. No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to this chapter as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter. A person shall be deemed to have vested rights if, prior to January 1, 1976, he or she has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials.

The reclamination plan required to be filed under subdivision (b) of Section 2770, shall apply to operations conducted after January 1, 1976, or to be conducted.

Nothing in this chapter shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined lands on which surface mining operations were conducted prior to January 1, 1976.

CHAPTER 976

An act to amend Sections 226, 226.3, and 226.4 of, and to repeal Sections 226.1 and 226.2 of, the Labor Code, relating to employment.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 226 of the Labor Code is amended to read:

226. (a) Every employer shall semimonthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions; provided, that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name of the employee and his or her social security

number; and (7) the name and address of the legal entity which is the employer.

The deductions made from cash payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement, or a record of the deductions, shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employer's records shall be available for inspection by the employee upon reasonable request.

This section shall not apply to any employer of any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(b) Any employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover all actual damages or one hundred dollars ($100), whichever is greater, plus costs and reasonable attorney fees.

(c) This section shall not apply to the state, or any city, county, city and county, district, or any other governmental entity.

SEC. 2. Section 226.1 of the Labor Code is repealed.

SEC. 3. Section 226.2 of the Labor Code is repealed.

SEC. 4. Section 226.3 of the Labor Code is amended to read:

226.3. Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of one hundred dollars ($100) per employee for each violation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

SEC. 5. Section 226.4 of the Labor Code is amended to read:

226.4. If, upon inspection or investigation, the Labor Commissioner determines that an employer is in violation of subdivision (a) of Section 226, the Labor Commissioner may issue a citation to the person in violation. The citation may be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. Each citation shall be in writing and shall describe the nature of the violation, including reference to the statuory provision alleged to have been violated.

CHAPTER 977

An act to amend Sections 1163, 1165, 1177, 1181, 1190, and 1195 of the Harbors and Navigation Code, relating to pilots, and making an appropriation therefor.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 1163 of the Harbors and Navigation Code is amended to read:

1163. (a) (1) Each retired or disabled pilot shall receive, as a monthly pension, that amount which is ninety-five dollars ($95) multiplied by the number of full years of service he performed as a pilot licensed under this division.

(2) A pilot who retires or becomes disabled shall not begin to receive his pension until the benefit year next following the date on which he retires or becomes disabled.

(3) No retired pilot shall receive benefits pursuant to the pension plan in any benefit year unless his resignation as an active pilot specifying a proposed date of retirement was submitted, in writing, to the board, prior to December if his retirement is to be effective the first day of the following January or prior to June if his retirement is to be effective the first day of the following July. His resignation shall become effective on either January 1 or July 1 as specified in the written resignation.

(4) If a retired or disabled pilot who is receiving a pension dies without a wife surviving him, his successor in interest shall receive the proceeds of the pension for the remainder of the benefit year, after which time it shall cease.

(b) (1) The widow of a deceased pilot who would be eligible for a pension pursuant to subdivision (c) of Section 1164 shall receive, as a monthly pension, one-half of the amount that her deceased husband would have received as a pension pursuant to this section had he lived.

(2) If a retired or disabled pilot receiving a pension dies, his widow shall continue to receive the full pension to which her deceased husband was entitled for the balance of the benefit year, after which she shall receive the amount specified in paragraph (1) of this subdivision.

(3) When a widow receiving a pension dies, her successor in interest shall receive the proceeds of the pension for the remainder of the benefit year, after which time it shall cease.

(c) For the purposes of the computations described in paragraph (1) of subdivision (a), six months or more of service by a pilot shall be considered a full year.

SEC. 2. Section 1165 of the Harbors and Navigation Code is

amended to read:

1165. (a) In addition to and concurrently with the basic pilotage rate described in Section 1190, a charge shall be levied for pilotage services at a rate necessary to provide the benefits to be paid out pursuant to the pension plan. The additional rate shall be determined as follows:

(1) On December 1 and June 1, of each year, the number of persons eligible to receive benefits under the plan, their identities, the amount each will be entitled to receive, and the total amount to be paid out to all such persons during each month of the next six-month period, shall be determined by the fiduciary agent.

(2) After the total amount to be paid out monthly under the plan has been determined, the rate necessary to provide that amount each month shall be calculated. The rate shall be based upon the volume of shipping, in gross registered tons, handled by pilots licensed under this division for the 12-month periods ending the previous September 30 and the previous March 31, respectively. The rate shall be expressed as mills per gross registered ton and shall be calculated to the nearest one-hundredth of a mill.

(3) Based on the above calculations, if the total amount to be paid out yearly will exceed seven hundred fifty thousand dollars ($750,000), the rate shall be established so that the pension plan will produce maximum revenues of seven hundred fifty thousand dollars ($750,000) per year and the benefits shall be reduced accordingly.

(b) The rate determined pursuant to paragraphs (1), (2), and (3) of subdivision (a) shall become effective on January 1 of the following year with respect to the September 30 calculations, and on July 1 of that year with respect to the March 31 calculations, and shall be in effect for the succeeding six-month period.

(c) Revenues for any month or year are the amounts to be received pursuant to the pension plan for pilotages during that month or year.

(d) Benefits pursuant to the new rate calculations shall be paid commencing in February and August of each year and shall continue through and include July of the same year and January of the following year. The period during which benefits are paid is the benefit year.

SEC. 3. Section 1177 of the Harbors and Navigation Code is amended to read:

1177. (a) On or before December 31, 1988, all pilots licensed pursuant to this division shall have proper federal endorsements allowing them to pilot on the high seas and on all waters of the Bays of San Francisco, San Pablo, and Suisun and the tributaries thereof, except for the Ports of Sacramento and Stockton.

(b) Notwithstanding subdivision (a), all pilots issued original licenses pursuant to this division after December 31, 1987, shall have proper federal endorsements allowing them to pilot on the high seas and on all waters of the Bays of San Francisco, San Pablo, and Suisun and the tributaries thereof and on the waters of the Ports of

Sacramento and Stockton.

SEC. 4. Section 1181 of the Harbors and Navigation Code is amended to read:

1181. The license of a pilot or inland pilot may be revoked or suspended before its expiration only for reasons of misconduct, which shall include, but not be limited to, the following:

(a) Neglect, for 30 days after it becomes due, to render an account to the board of all money received for pilotage.

(b) Neglect, for 30 days after it becomes due, to pay over to the board the percentage of all pilotage money received , as set by the board pursuant to subdivision (c) of Section 1136.

(c) Rendering to the board a false account of pilotage received.

(d) Absence from duty for more than one month at any one time without leave granted by the board, unless sickness or personal injury causes the absence. This subdivision does not apply to inland pilots.

(e) Refusing to exhibit the pilot or inland pilot license when requested to do so by the master of any vessel boarded.

(f) Intoxication or being under the influence of any substance or combination of substances which so affects the nervous system, brain, or muscles as to impair, to an appreciable degree, the ability to conduct the duties of a pilot or inland pilot while on duty.

(g) Negligently, ignorantly, or willfully running any vessel on shore, or otherwise rendering it liable to damage, or otherwise causing injury to persons or damage to property.

(h) Willful violation of the rules and regulations adopted by the board for the government of pilots or inland pilots.

(i) Inability to comply with the standards of health or physical condition requisite to the duties of a pilot or inland pilot, but in that case the burden of proving compliance with these standards is upon the licensee, unless prior to the hearing the licensee takes and passes those tests or examinations required by the board.

SEC. 5. Section 1190 of the Harbors and Navigation Code is amended to read:

1190. (a) Every vessel spoken inward or outward bound, shall pay the following rate of bar pilotage through the Golden Gate and into or out of the Bays of San Francisco, San Pablo, and Suisun:

(1) Seven dollars and thirty-five cents ($7.35) per draft foot of the vessel's deepest draft and fractions of a foot pro rata, and an additional charge of 46.06 mills ($0.04606) per high gross registered ton.

(2) A minimum charge for bar pilotage shall be six hundred dollars ($600) for each vessel piloted.

(3) The vessel's deepest draft shall be the maximum draft attained, on a stillwater basis, at any part of the vessel during the course of such transit inward or outward.

(b) The rate specified in subdivision (a) shall apply only to a pilotage which passes through the Golden Gate to or from the high seas to or from a berth within an area bounded by the Southern Pacific Bridge to the north and Hunter's Point to the south. The rate

for pilotage to or from the high seas to or from a point past the Southern Pacific Bridge or Hunter's Point shall include a movement fee in addition to the basic bar pilotage rate as specified by the board pursuant to Section 1191.

(c) The rate established in paragraph (1) of subdivision (a) shall be for a trip from the high seas to dock or from the dock to high seas. The rate specified in Section 1191 shall not be charged by pilots for docking and undocking vessels. This subdivision does not apply to the rates charged by inland pilots for their services.

(d) The board shall determine the number of pilots to be licensed based on the 1986 manpower study adopted by the board.

SEC. 6. Section 1195 of the Harbors and Navigation Code is amended to read:

1195. (a) In addition to other fees for pilotage, there shall be a surcharge in an amount established by the board for each movement of a vessel using pilot services for each pilot trainee who is enrolled in the pilot training program established by the board.

(b) The moneys charged and collected each month from the pilot trainee surcharge shall be paid to the board. The moneys shall be used only to fund the pilot training program in the manner established by the board.

(c) By action of the board, the board may adjust the amount established pursuant to subdivision (a) as necessary to efficiently administer the pilot training program.

CHAPTER 978

An act to amend Section 16119 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 22, 1987 Filed with Secretary of State September 23, 1987]

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

SECTION 1. Section 16119 of the Welfare and Institutions Code is amended to read:

16119. The department and all adoption agencies shall disseminate information to prospective adoptive families, especially those families of lower income levels and those belonging to disadvantaged groups, as to the availability of adoptable special needs children and of the existence of aid to adoptive families under this chapter. At the time application for adoption of a special needs child is made, the department or the licensed adoption agency, whichever is appropriate, shall provide the prospective adoptive family with information, in writing, on the availability of Adoption Assistance Program benefits, with an explanation of the difference between these benefits and foster care payments.

The county responsible for providing foster care for a child shall provide financial aid to the adoptive family in an amount determined pursuant to Section 16120.

CHAPTER 979

An act to amend Section 8573 of, and to add Sections 8664.13 and 8693.5 to, the Fish and Game Code, relating to fish, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 8573 of the Fish and Game Code is amended to read:

8573. Drift gill nets may be used to take shark and swordfish under the permit provided in this article and are subject to the following restrictions:

(a) From June 1 to November 15, inclusive, shark or swordfish gill nets shall not be in the water from two hours after sunrise to two hours before sunset east of a line described as follows:

From a point beginning at Las Pitas Point to San Pedro Point on Santa Cruz Island, thence to Gull Island Light, thence to the northeast extremity of San Nicolas Island, thence along the high water mark on the west side of San Nicolas Island to the southeast extremity of San Nicolas Island, thence to the northwest extremity of San Clemente Island, thence along the high water mark on the west side of San Clemente Island to the southeast extremity of San Clemente Island, thence along a line running 150° true from the southeast extremity of San Clemente Island to the westerly extension of the boundary line between the Republic of Mexico and San Diego County.

(b) (1) The total maximum length of a shark or swordfish gill net on the net reel on a vessel, on the deck of the vessel, and in the water at any time shall not exceed 6,000 feet in float line length. The float line length shall be determined by measuring the float line, as tied, of all the net panels, excluding the bridle, towline, or stotza and excluding the parachute or other drogue device.

(2) Any shark or swordfish gill net on the reel shall have the float lines of the adjacent panels tied together, the lead lines of the adjacent panels tied together, and the web of the adjacent panels laced together. No quick disconnect device may be used unless the total maximum length of all shark and swordfish gill nets, including all spare gill nets or net panels on the vessel and all gill nets or net panels on the net reels on the vessel, on the deck of the vessel, stored aboard the vessel, and in the water, does not exceed 6,000 feet in float

line length as determined under paragraph (1).

(3) Spare shark or swordfish gill net aboard the vessel shall not exceed 250 fathoms (1,500 feet) in total length, and the spare net shall be in separated panels of not to exceed 80 fathoms (480 feet) in float line length for each panel, with the float lines and leadlines attached to each panel separately gathered and tied, and the spare net panels stowed in lockers, wells, or other storage space.

(4) If a torn panel is replaced in a working shark or swordfish gill net, the torn panel shall be removed from the working net before the replacement panel is attached to the working net.

(c) Any end of a shark or swordfish gill net not attached to the permittee's vessel shall be marked by a pole with a radar reflector. The reflector shall be at least six feet above the surface of the ocean and not less than 10 inches in any dimension except thickness. The permittee's permit number shall be permanently affixed to at least one buoy or float which is attached to the radar reflector staff. The permit number shall be at least one and one-half inches in height and all markings shall be at least one-quarter inch in width.

(d) For the purposes of this article, "shark or swordfish gill net" means a drift gill net of 14-inch or greater mesh size.

SEC. 2. Section 8664.13 is added to the Fish and Game Code, to read:

8664.13. During the period from December 15 to May 15, inclusive, set gill nets and trammel nets with mesh eight inches or greater and less than 12 inches used in ocean waters 25 fathoms or less in depth between a line extending due west magnetic from Point Conception and the westerly extension of the boundary line between the Republic of Mexico and the United States shall be constructed with breakaway and anchoring features, as follows:

(a) The corkline and any other line which may extend across the top of the net shall have a combined breaking strength not to exceed 2,400 pounds.

(b) A breakaway device shall be used along the corkline (headrope) and along the leadline (footrope) at regular intervals of 45 fathoms or less.

(c) Each breakaway or disconnect device shall be constructed as described in either of the following:

(1) Of nylon twine, or an equivalent material, with a breaking strength of 200 pounds or less, using not more than eight complete circular (360) wraps of the twine to connect the ends of each corkline and leadline interval, which allows each breakaway or disconnect device a breaking strength of not more than 1,600 pounds.

(2) As the department may otherwise authorize.

(d) Anchors used to secure each end of the net to the ocean bottom shall weigh not less than 35 pounds each, and shall be attached to the net by a ground rope and bridle with combined length of not less than 15 fathoms from the anchor to the net.

SEC. 3. Section 8693.5 is added to the Fish and Game Code, to read:

8693.5. During the period from December 15 to May 15, inclusive, gill nets and trammel nets shall not be used within two nautical miles of Point Loma in San Diego County or San Mateo Point in Orange County or within one nautical mile of Point La Jolla in San Diego County, Dana Point in Orange County, or Point Fermin, Point Vicente, Palos Verdes Point, or Point Dume in Los Angeles County.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 for this act to be effective in the fishing season this year, it is necessary that this act take effect immediately.

CHAPTER 980

An act to amend Section 8242 of the Government Code, and to amend Section 19701 of the Welfare and Institutions Code, relating to boards and commissions.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 8242 of the Government Code is amended to read:

8242. (a) Public members of the commission shall receive one hundred dollars ($100) per diem while on official business of the commission, not to exceed 12 days per year. Each member of the commission shall also be entitled to receive his or her actual necessary traveling expenses while on official business of the commission.

(b) The commission shall select annually from its membership, a chairperson and vice chairperson.

SEC. 2. Section 19701 of the Welfare and Institutions Code is amended to read:

19701. (a) The members of the board shall receive their actual and necessary traveling expenses incurred in the course of official duties.

(b) In addition to subdivision (a), each member shall receive a per diem of one hundred dollars ($100) for each day actually spent in the discharge of official duties.

Those payments shall be made from federal and state general fund moneys appropriated to the department.

CHAPTER 981

An act to amend Sections 25159.5 and 25356.1 of the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 25159.5 of the Health and Safety Code is amended to read:

25159.5. (a) In adopting or revising standards and regulations pursuant to this chapter, the department shall, insofar as practicable, make the standards and regulations conform with corresponding regulations adopted by the Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.). This section does not prohibit the department from adopting standards and regulations which are more stringent or more extensive than federal regulations.

(b) Until the state program is granted final authorization by the Environmental Protection Agency pursuant to Section 6926 of Title 42 of the United States Code, all regulations adopted pursuant to the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.) shall be deemed to be the regulations of the department, except that any state statute or regulation which is more stringent or more extensive than a federal regulation shall supersede the federal regulation.

SEC. 2. Section 25356.1 of the Health and Safety Code is amended to read:

25356.1. (a) The department, or, if appropriate, the regional water quality control board shall prepare or approve remedial action plans for all sites listed pursuant to Section 25356.

(b) A potentially responsible party may request the department or the regional water quality control board, when appropriate, to prepare or approve a remedial action plan for any site not listed pursuant to Section 25356 if the department or the State Water Resources Control Board determines that a removal or remedial action is required to respond to a release of a hazardous substance. The department or the state board shall respond to a request to prepare or approve a remedial action plan within 90 days of receipt. This subdivision does not affect the authority of any regional water quality control board to issue and enforce a cleanup and abatement order pursuant to Section 13304 of the Water Code or a cease and desist order pursuant to Section 13301 of the Water Code.

(c) All remedial action plans prepared or approved pursuant to this section shall be based upon Section 25350, Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.61 et seq.), and any amendments thereto, and upon all of the following factors, to the extent that these factors are consistent with these federal regulations and do not require a less stringent level of cleanup than these federal regulations:

(1) Health and safety risks posed by the conditions at the site. When considering these risks, the department or the regional water quality control board shall consider scientific data and reports which may have a relationship to the site.

(2) The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources.

(3) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses. The department or regional water quality control board shall consider the extent to which remedial action measures are available which use, as a principal element, treatment that significantly reduces the volume, toxicity, or mobility of the hazardous substances, as opposed to remedial actions which do not use this treatment. The department or regional water quality control board shall not select remedial action measures which use offsite transport and disposal of untreated hazardous substances or contaminated materials if practical and cost-effective treatment technologies are available.

(4) Site specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(5) Cost effectiveness of alternative remedial action measures. In evaluating the cost effectiveness of proposed alternative remedial action measures, the department or regional water quality control board shall consider, to the extent possible, the total short-term and long-term costs of these actions and shall use, as a major factor, whether the deferral of a remedial action will result, or is likely to result, in a rapid increase in cost or in the hazard to public health or the environment posed by the site. Land disposal shall not be deemed the most cost-effective measure merely on the basis of lower short-term cost.

(6) The potential environmental impacts of alternative remedial action measures, including, but not limited to, land disposal of the untreated hazardous substances as opposed to treatment of the hazardous substances to remove or reduce its volume, toxicity, or mobility prior to disposal.

(d) A remedial action plan prepared or approved pursuant to this section shall include a statement of reasons setting forth the basis for the removal and remedial actions selected. The statement shall include an evaluation of each proposed alternative submitted to, or

prepared by, the department or the regional water quality control board for a particular site. The statement shall also include an evaluation of the consistency of the removal and remedial actions proposed by the plan with the federal regulations and factors specified in subdivision (c) and shall set forth the reasons for rejection of alternative removal and remedial actions. The statement shall also include a nonbinding preliminary allocation of responsibility among all identifiable potentially responsible parties at a particular site, including those parties which may have been released, or may otherwise be immune, from liability pursuant to this chapter or any other provision of law. Before adopting a final remedial action plan, the department or the regional water quality control board shall prepare or approve a draft remedial action plan and shall do all of the following:

(1) Circulate the draft plan for at least 30 days for public comment.

(2) Notify affected local and state agencies of the removal and remedial actions proposed in the remedial action plan and publish a notice in a newspaper of general circulation in the area affected by the draft remedial action plan. The department or the regional water quality control board shall also post notices in the location where the proposed removal or remedial action would be located and shall notify, by direct mailing, the owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll.

(3) Hold one or more meetings with the lead and responsible agencies for the removal and remedial actions, the potentially responsible parties for the removal and remedial actions, and the interested public, to provide the public with the information which is necessary to address the issues which concern the public. The information to be provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the removal and remedial actions, and a description of the proposed removal and remedial actions.

(4) Comply with Section 25358.7.

(e) After complying with subdivision (d), the department or the regional water quality control board shall review and consider any public comments, and shall revise the draft plan, if appropriate. The department or the regional water quality control board shall then issue the final remedial action plan.

(f) A potentially responsible party named in the final remedial action plan issued by the department or the regional water quality control board may seek judicial review of the final remedial action plan pursuant to Section 1085 of the Code of Civil Procedure within 30 days after the final plan is issued. The filing of a petition seeking judicial review of a final remedial action plan shall not stay any removal or remedial action specified in the final plan.

For purposes of judicial review, the court shall uphold the final

remedial action plan if the plan is based upon substantial evidence available to the department or the regional water quality control board, as the case may be. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction, including, but not limited to, enjoining the expenditure of funds pursuant to paragraph (2) of subdivision (b) of Section 25385.6.

(g) This section does not require the department or a regional water quality control board to prepare a remedial action plan if conditions present at a site present an imminent or substantial endangerment to the public health and safety or to the environment.

(h) Article 2 (commencing with Section 13320), Article 3 (commencing with Section 13330), Article 5 (commencing with Section 13350), and Article 6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code apply to any action or failure to act by a regional water quality control board pursuant to this section.

SEC. 3. Section 25356.1 of the Health and Safety Code is amended to read:

25356.1. (a) Except as provided in subdivision (g), the department, or, if appropriate, the regional water quality control board shall prepare or approve remedial action plans for all sites listed pursuant to Section 25356.

(b) A potentially responsible party may request the department or the regional water quality control board, when appropriate, to prepare or approve a remedial action plan for any site not listed pursuant to Section 25356 if the department or the State Water Resources Control Board determines that a removal or remedial action is required to respond to a release of a hazardous substance. The department or the state board shall respond to a request to prepare or approve a remedial action plan within 90 days of receipt. This subdivision does not affect the authority of any regional water quality control board to issue and enforce a cleanup and abatement order pursuant to Section 13304 of the Water Code or a cease and desist order pursuant to Section 13301 of the Water Code.

(c) All remedial action plans prepared or approved pursuant to this section shall be based upon Section 25350, Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Sec. 300.61 et seq.), and any amendments thereto, and upon all of the following factors, to the extent that these factors are consistent with these federal regulations and do not require a less stringent level of cleanup than these federal regulations:

(1) Health and safety risks posed by the conditions at the site. When considering these risks, the department or the regional water quality control board shall consider scientific data and reports which may have a relationship to the site.

(2) The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources.

(3) The effect of alternative remedial action measures on the

reasonable availability of groundwater resources for present, future, and probable beneficial uses. The department or regional water quality control board shall consider the extent to which remedial action measures are available which use, as a principal element, treatment that significantly reduces the volume, toxicity, or mobility of the hazardous substances, as opposed to remedial actions which do not use this treatment. The department or regional water quality control board shall not select remedial action measures which use offsite transport and disposal of untreated hazardous substances or contaminated materials if practical and cost-effective treatment technologies are available.

(4) Site specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(5) Cost effectiveness of alternative remedial action measures. In evaluating the cost effectiveness of proposed alternative remedial action measures, the department or regional water quality control board shall consider, to the extent possible, the total short-term and long-term costs of these actions and shall use, as a major factor, whether the deferral of a remedial action will result, or is likely to result, in a rapid increase in cost or in the hazard to public health or the environment posed by the site. Land disposal shall not be deemed the most cost-effective measure merely on the basis of lower short-term cost.

(6) The potential environmental impacts of alternative remedial action measures, including, but not limited to, land disposal of the untreated hazardous substances as opposed to treatment of the hazardous substances to remove or reduce its volume, toxicity, or mobility prior to disposal.

(d) A remedial action plan prepared or approved pursuant to this section shall include a statement of reasons setting forth the basis for the removal and remedial actions selected. The statement shall include an evaluation of each proposed alternative submitted to, or prepared by, the department or the regional water quality control board for a particular site. The statement shall also include an evaluation of the consistency of the removal and remedial actions proposed by the plan with the federal regulations and factors specified in subdivision (c) and shall set forth the reasons for rejection of alternative removal and remedial actions. The statement shall also include a nonbinding preliminary allocation of responsibility among all identifiable potentially responsible parties at a particular site, including those parties which may have been released, or may otherwise be immune, from liability pursuant to this chapter or any other provision of law. Before adopting a final remedial action plan, the department or the regional water quality control board shall prepare or approve a draft remedial action plan and shall do all of the following:

(1) Circulate the draft plan for at least 30 days for public

comment.

(2) Notify affected local and state agencies of the removal and remedial actions proposed in the remedial action plan and publish a notice in a newspaper of general circulation in the area affected by the draft remedial action plan. The department or the regional water quality control board shall also post notices in the location where the proposed removal or remedial action would be located and shall notify, by direct mailing, the owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll.

(3) Hold one or more meetings with the lead and responsible agencies for the removal and remedial actions, the potentially responsible parties for the removal and remedial actions, and the interested public, to provide the public with the information which is necessary to address the issues which concern the public. The information to be provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the removal and remedial actions, and a description of the proposed removal and remedial actions.

(4) Comply with Section 25358.7.

(e) After complying with subdivision (d), the department or the regional water quality control board shall review and consider any public comments, and shall revise the draft plan, if appropriate. The department or the regional water quality control board shall then issue the final remedial action plan.

(f) A potentially responsible party named in the final remedial action plan issued by the department or the regional water quality control board may seek judicial review of the final remedial action plan pursuant to Section 1085 of the Code of Civil Procedure within 30 days after the final plan is issued. The filing of a petition seeking judicial review of a final remedial action plan shall not stay any removal or remedial action specified in the final plan.

For purposes of judicial review, the court shall uphold the final remedial action plan if the plan is based upon substantial evidence available to the department or the regional water quality control board, as the case may be. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction, including, but not limited to, enjoining the expenditure of funds pursuant to paragraph (2) of subdivision (b) of Section 25385.6.

(g) (1) This section does not require the department or a regional water quality control board to prepare a remedial action plan if conditions present at a site present an imminent or substantial endangerment to the public health and safety or to the environment.

(2) A remedial action plan is not required pursuant to subdivision (a) if all of the following apply:

(A) The department, a regional water quality control board, or a responsible party takes a removal action at a site listed pursuant to Section 25356 to prevent, minimize, or mitigate damage that may

otherwise result from a release or threatened release of a hazardous substance.

(B) The total cost of the removal action is less than two hundred fifty thousand dollars ($250,000).

(C) The department, after appropriate testing and analysis, determines that the removal action has adequately abated conditions at the site and the site may be removed from the list established pursuant to Section 25356.

(3) Paragraph (2) of this subdivision does not apply to a removal action paid from the Hazardous Substance Cleanup Fund.

(h) Article 2 (commencing with Section 13320), Article 3 (commencing with Section 13330), Article 5 (commencing with Section 13350), and Article 6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code apply to any action or failure to act by a regional water quality control board pursuant to this section.

SEC. 4. Section 3 of this bill incorporates amendments to Section 25356.1 of the Health and Safety Code proposed by both this bill and AB 2036. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 25356.1 of the Health and Safety Code, and (3) this bill is enacted after AB 2036, in which case Section 2 of this bill shall not become operative.

CHAPTER 982

An act to amend Sections 66411.1, 66431, 66435.2, 66436, 66439, 66440, 66441, 66442, 66445, 66447, 66449, 66450, 66452.4, 66452.5, 66457, 66458, 66463, 66464, 66477.1, 66492, 66493, and 66499.23 of the Government Code, relating to subdivisions.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 66411.1 of the Government Code is amended to read:

66411.1. (a) Whenever a local ordinance requires improvements for a division of land which is not a subdivision of five or more lots, the regulations shall be limited to the dedication of rights-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created. Requirements for the construction of offsite and onsite improvements shall be noticed by a statement on the parcel map, on the instrument evidencing the waiver of the parcel map, or by a separate instrument and shall be recorded on, concurrently with, or prior to the parcel map or instrument of waiver of a parcel map being filed for record.

(b) Fulfillment of the construction requirements shall not be required until the time a permit or other grant of approval for development of the parcel is issued by the local agency or, where provided by local ordinances, until the time the construction of the improvements is required pursuant to an agreement between the subdivider and the local agency, except that in the absence of an agreement, a local agency may require fulfillment of the construction requirements within a reasonable time following approval of the parcel map and prior to the issuance of a permit or other grant of approval for the development of a parcel upon a finding by the local agency that fulfillment of the construction requirements is necessary for either of the following reasons:

(1) The public health and safety.

(2) The required construction is a necessary prerequisite to the orderly development of the surrounding area.

SEC. 2. Section 66431 of the Government Code is amended to read:

66431. Upon mutual agreement of their respective legislative bodies, the county surveyor may perform any or all of the duties assigned to the city engineer, including required certifications or statements. Whenever these duties have been divided between the county surveyor and city engineer, each officer shall state the duties performed by him or her.

SEC. 3. Section 66435.2 of the Government Code is amended to read:

66435.2. Whenever a certificate, statement, or acknowledgment is made by separate instrument, there shall appear on the final map a reference to the separately recorded document. This reference shall be completed by the county recorder pursuant to Section 66468.1.

SEC. 4. Section 66436 of the Government Code is amended to read:

66436. (a) A statement, signed and acknowledged by all parties having any record title interest in the subdivided real property, consenting to the preparation and recordation of the final map is required, except in the following circumstances:

(1) A lien for state, county, municipal, or local taxes or special assessments, a trust interest under bond indentures, or mechanics' liens do not constitute a record title interest in land for the purpose of this chapter or any local ordinance.

(2) The signature of either the holder of beneficial interests under trust deeds or the trustee under the trust deeds, but not both, may be omitted. The signature of either shall constitute a full and complete subordination of the lien of the deed of trust to the map and any interest created by the map.

(3) Signatures of parties owning the following types of interests may be omitted if their names and the nature of their respective interests are stated on the final map:

(A) (i) Rights-of-way, easements or other interests which cannot

ripen into a fee, except those owned by a public entity, public utility, or subsidiary of a public utility for conveyance to the public utility for rights-of-way. If, however, the legislative body or advisory agency determines that division and development of the property in the manner set forth on the approved or conditionally approved tentative map will not unreasonably interfere with the free and complete exercise of the public entity or public utility right-of-way or easement, the signature of the public entity or public utility may be omitted. Where that determination is made, the subdivider shall send, by certified mail, a sketch of the proposed final map, together with a copy of this section, to any public entity or public utility which has previously acquired a right-of-way or easement.

(ii) If the public entity or utility objects to either recording the final map without its signature or the determination of the legislative body or advisory agency that the division and development of the property will not unreasonably interfere with the full and complete exercise of its right-of-way or easement, it shall so notify the subdivider and the legislative body or advisory agency within 30 days after receipt of the materials from the subdivider.

(iii) If the public entity or utility objects to recording the final map without its signature, the public entity or utility so objecting may affix its signature to the final map within 30 days of filing its objection with the legislative body or advisory agency.

(iv) If the public entity or utility either does not file an objection with the legislative body or advisory agency or fails to affix its signature within 30 days of filing its objection to recording the map without its signature, the local agency may record the final map without the signature.

(v) If the public entity or utility files an objection to the determination of the legislative body or advisory agency that the division and development of the property will not unreasonably interfere with the exercise of its right-of-way or easement, the legislative body or advisory agency shall set the matter for public hearing to be held not less than 10 nor more than 30 days of receipt of the objection. At the hearing, the public entity or public utility shall present evidence in support of its position that the division and development of the property will unreasonably interfere with the free and complete exercise of the objector's right-of-way or easement.

(vi) If the legislative body or advisory agency finds, following the hearing, that the development and division will in fact unreasonably interfere with the free and complete exercise of the objector's right-of-way or easement, it shall set forth those conditions whereby the unreasonable interference will be eliminated and upon compliance with those conditions by the subdivider, the final map may be recorded with or without the signature of the objector. If the legislative body or advisory agency finds that the development and division will in fact not unreasonably interfere with the free and complete exercise of the objector's right-of-way or easement, the

final map may be recorded without the signature of the objector, notwithstanding the objections.

(vii) Failure of the public entity or public utility to file an objection pursuant to this section shall in no way affect its rights under a right-of-way or easement.

(B) Rights-of-way, easements, or reversions, which by reason of changed conditions, long disuse, or laches appear to be no longer of practical use or value and signatures are impossible or impractical to obtain. A statement of the circumstances preventing the procurement of the signatures shall also be stated on the map.

(C) Interests in, or rights to, minerals, including but not limited to, oil, gas, or other hydrocarbon substances.

(4) Real property originally patented by the United States or by the State of California, which original patent reserved interest to either or both of those entities, may be included in the final map without the consent of the United States or the State of California to the map or to dedications made by it.

(b) No monetary liability shall be incurred by, and no cause of action shall arise against, a local agency, a party, the subdivider, the subdivider's agent, or the engineer or land surveyor who prepared the map, on account of the omission of any signature, which omission is authorized by this section.

(c) A notary acknowledgment shall be deemed complete for recording without the official seal of the notary, so long as the name of the notary, the county of the notary's principal place of business, and the notary's commission expiration date are typed or printed below the notary's signature in the acknowledgment.

SEC. 5. Section 66439 of the Government Code is amended to read:

66439. (a) Dedications of, or offers to dedicate interests in, real property for specified public purposes shall be made by a statement on the final map, signed and acknowledged by those parties having any record title interest in the real property being subdivided, subject to the provisions of Section 66436.

(b) In the event any street shown on a final map is not offered for dedication, the statement may contain a declaration to this effect. If the statement appears on the final map and if the map is approved by the legislative body, the use of the street or streets by the public shall be permissive only.

(c) An offer of dedication of real property for street or public utility easement purposes shall be deemed not to include any public utility facilities located on or under the real property unless, and only to the extent that, an intent to dedicate the facilities is expressly declared in the statement.

SEC. 6. Section 66440 of the Government Code is amended to read:

66440. The final map shall contain a certificate or statement for execution by the clerk of each approving legislative body stating that the body approved the map and accepted, accepted subject to

improvement, or rejected, on behalf of the public, any real property offered for dedication for public use in conformity with the terms of the offer of dedication.

SEC. 7. Section 66441 of the Government Code is amended to read:

66441. A statement by the engineer or surveyor responsible for the survey and final map is required. His or her statement shall give the date of the survey, state that the survey and final map were made by him or her or under his or her direction, and that the survey is true and complete as shown.

The statement shall also state that all the monuments are of the character and occupy the positions indicated, or that they will be set in those positions on or before a specified later date. The statement shall also state that the monuments are, or will be, sufficient to enable the survey to be retraced.

SEC. 8. Section 66442 of the Government Code is amended to read:

66442. (a) If a subdivision for which a final map is required lies within an unincorporated area, a certificate or statement by the county surveyor is required. If a subdivision lies within a city, a certificate or statement by the city engineer is required. The appropriate official shall state that:

(1) He or she has examined the map.

(2) The subdivision as shown is substantially the same as it appeared on the tentative map, and any approved alterations thereof.

(3) All provisions of this chapter and of any local ordinances applicable at the time of approval of the tentative map have been complied with.

(4) He or she is satisfied that the map is technically correct.

(b) The county surveyor or the city engineer, as the case may be, or other public official or employee qualified and authorized to perform the functions of either, shall complete and file with his or her legislative body his or her certificate or statement, as required by this section, within 20 days from the time the final map is submitted to him or her by the subdivider for approval.

SEC. 9. Section 66445 of the Government Code is amended to read:

66445. The parcel map shall be prepared by, or under the direction of, a registered civil engineer or licensed land surveyor, shall show the location of streets and property lines bounding the property, and shall conform to all of the following provisions:

(a) It shall be legibly drawn, printed or reproduced by a process guaranteeing a permanent record in black on tracing cloth or polyester base film. Certificates or statements, affidavits, and acknowledgments may be legibly stamped or printed upon the map with opaque ink. If ink is used on polyester base film, the ink surface shall be coated with a suitable substance to assure permanent legibility.

(b) The size of each sheet shall be 18 by 26 inches. A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch. The scale of the map shall be large enough to show all details clearly and enough sheets shall be used to accomplish this end. The particular number of the sheet and the total number of sheets comprising the map shall be stated on each of the sheets, and its relation to each adjoining sheet shall be clearly shown.

(c) Each parcel shall be numbered and each block may be numbered or lettered. Each street shall be named or otherewise designated.

(d) (1) The exterior boundary of the land included within the subdivision shall be indicated by distinctive symbols and clearly so designated.

(2) The map shall show the location of each parcel and its relation to surrounding surveys. If the map includes a "designated remainder" parcel or similar parcel, and the gross area of the "designated remainder" parcel or similar parcel is five acres or more, that remainder parcel need not be shown on the map and its location need not be indicated as a matter or survey, but only by deed reference to the existing boundaries of the remainder parcel.

(3) A parcel designated as "not a part" shall be deemed to be a "designated remainder" for purposes of this section.

(e) Subject to the provisions of Section 66436, a statement, signed and acknowledged by all parties having any record title interest in the real property subdivided, consenting to the preparation and recordation of the parcel map is required, except that less inclusive requirements may be provided by local ordinance.

With respect to a division of land into four or fewer parcels, where dedications or offers of dedications are not required, the statement shall be signed and acknowledged by the subdivider only. If the subdivider does not have a record title ownership interest in the property to be divided, the local agency may require that the subdivider provide the local agency with satisfactory evidence that the persons with record title ownership have consented to the proposed division. For purposes of this paragraph, "record title ownership" shall mean fee title of record unless a leasehold interest is to be divided, in which case "record title ownership" shall mean ownership of record of the leasehold interest. "Record title ownership" does not include ownership of mineral rights or other subsurface interests which have been severed from ownership of the surface.

(f) Notwithstanding any other provision of this article, local agencies may require that those statements and acknowledgments required pursuant to subdivision (e) be made by separate instrument to be recorded concurrently with the parcel map being filed for record.

(g) On and after January 1, 1987, no additional survey and map requirements shall be included on a parcel map which do not affect record title interests. However, the map shall contain a notation of

reference to survey and map information required by a local ordinance adopted pursuant to Section 66434.2.

(h) Whenever a certificate or acknowledgment is made by separate instrument, there shall appear on the final map a reference to the separately recorded document. This reference shall be completed by the county recorder pursuant to Section 66468.1.

(i) If a field survey was performed, the parcel map shall contain a statement by the engineer or surveyor responsible for the preparation of the map that states that all monuments are of the character and occupy the positions indicated, or that they will be set in those positions on or before a specified date, and that the monuments are, or will be, sufficient to enable the survey to be retraced.

SEC. 10. Section 66447 of the Government Code is amended to read:

66447. If dedications or offers of dedication are required, they may be made either by a statement on the parcel map or by separate instrument, as provided by local ordinance. If dedications or offers of dedication are made by separate instrument, the dedications or offers of dedication shall be recorded concurrently with, or prior to, the parcel map being filed for record.

The dedication or offers of dedication, whether by statement or separate instrument, shall be signed by the same parties and in the same manner as set forth in Section 66439 for dedications by a final map.

SEC. 11. Section 66449 of the Government Code is amended to read:

66449. The following statements shall appear on a parcel map:

(a) Engineer's (surveyor's) statement:

This map was prepared by me or under my direction (and was compiled from record data) (and is based upon a field survey) in conformance with the requirements of the Subdivision Map Act and local ordinance at the request of (name of person authorizing map) on (date). I hereby state that this parcel map substantially conforms to the approved or conditionally approved tentative map, if any.

(Signed) _____

R.C.E. (or L.S.) No. _____

(b) Recorder's certificate or statement.

Filed this ____ day of _____, 19__, at _____m. in Book _____ of _____, at page _____, at the request of _____.

Signed _____

County Recorder

SEC. 12. Section 66450 of the Government Code is amended to read:

66450. If a subdivision for which a parcel map is required lies

within unincorporated territory, the parcel map shall be submitted to the county surveyor for his or her examination prior to filing, and if the subdivision lies within a city, the parcel map shall be submitted to the city engineer for his or her examination prior to filing.

Within 20 days after receiving the parcel map, the officer or officers shall examine it for the survey information shown thereon, and if satisfied that it is technically correct, the following statement shall be placed on the map.

County Surveyor's Statement
(or City Engineer's Statement)

This map conforms with the requirements of the Subdivision Map Act and local ordinance.

Dated: _____.

Signed: _____

County surveyor/city engineer

SEC. 13. Section 66452.4 of the Government Code is amended to read:

66452.4. If no action is taken upon a tentative map by an advisory agency which is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map or by the legislative body within the time limits specified in this chapter or any authorized extension thereof, the tentative map as filed, shall be deemed to be approved, insofar as it complies with other applicable requirements of this division and local ordinance, and it shall be the duty of the clerk of the legislative body to certify or state his or her approval.

SEC. 14. Section 66452.5 of the Government Code is amended to read:

66452.5. (a) The subdivider, or any tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, may appeal from any action of the advisory agency with respect to a tentative map to the appeal board established by local ordinance or, if none, to the legislative body.

The appeal shall be filed with the clerk of the appeal board, or if there is none, with the clerk of the legislative body within 10 days after the action of the advisory agency from which the appeal is being taken.

Upon the filing of an appeal, the appeal board or legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of filing the appeal. Within 10 days following the conclusion of the hearing, the appeal board or legislative body shall render its decision on the appeal.

(b) The subdivider, any tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project,

or the advisory agency may appeal from the action of the appeal board to the legislative body. The appeal shall be filed in writing with the clerk of the legislative body within 10 days after the action of the appeal board from which the appeal is being taken.

After the filing of an appeal, the legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of a request therefor filed by the subdivider or the appellant. Within 10 days following the conclusion of the hearing, the legislative body shall render its decision on the appeal. The decision shall comply with the provisions of Sections 66473, 66473.5, and 66474, and shall include any findings required by those sections.

(c) If there is an appeal board and it fails to act upon an appeal within the time limit specified in this chapter, the decision from which the appeal was taken shall be deemed affirmed and an appeal therefrom may thereupon be taken to the legislative body as provided in subdivision (b) of this section. If no further appeal is taken, the tentative map, insofar as it complies with applicable requirements of this division and local ordinance, shall be deemed approved or conditionally approved as last approved or conditionally approved by the advisory agency, and it shall be the duty of the clerk of the legislative body to certify or state that approval, or if the advisory agency is one which is not authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, the advisory agency shall submit its report to the legislative body as if no appeal had been taken.

If the legislative body fails to act upon an appeal within the time limit specified in this chapter, the tentative map, insofar as it complies with applicable requirements of this division and local ordinance, shall be deemed to be approved or conditionally approved as last approved or conditionally approved, and it shall be the duty of the clerk of the legislative body to certify or state that approval.

(d) Where a local ordinance so provides, any interested person adversely affected by a decision of the advisory agency or appeal board may file a complaint with the governing body concerning any decision of the advisory agency or appeal board. The complaint shall be filed with the clerk of the governing body within 10 days after the action of the advisory agency or appeal board which is the subject of the complaint. Upon the filing of the complaint, the governing body may set the matter for hearing. The hearing shall be held within 30 days after the filing of the complaint. The hearing may be a public hearing for which notice shall be given in the time and manner provided.

Upon conclusion of the hearing, the governing body shall, within seven days, declare its findings based upon the testimony and documents produced before it or before the advisory board or the appeal board. It may sustain, modify, reject, or overrule any recommendations or rulings of the advisory board or the appeal board and may make any findings which are not inconsistent with

the provisions of this chapter or local ordinance adopted pursuant to this chapter.

(e) Notice of each hearing provided for in this section shall be sent by United States mail to each tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, at least three days prior to the hearing. The notice requirement of this sudivision shall be deemed satisfied if the notice complies with the legal requirements for service by mail. Pursuant to Section 66451.2, fees may be collected from the subdivider for expenses incurred under this section.

SEC. 15. Section 66457 of the Government Code is amended to read:

66457. (a) A final map or parcel map conforming to the approved or conditionally approved tentative map, if any, may be filed with the legislative body for approval after all required certificates or statements on the map have been signed and, where necessary, acknowledged.

(b) If the subdivision lies entirely within the territory of a city, the map shall be filed with the city. If the subdivision lies entirely within unincorporated territory, the map shall be filed with the county. If the subdivision lies partially within two or more territories, the map shall be filed with each, and each shall act thereon as provided in this chapter.

SEC. 16. Section 66458 of the Government Code is amended to read:

66458. (a) The legislative body shall, at the meeting at which it receives the map or, at its next regular meeting after the meeting at which it receives the map, approve the map if it conforms to all the requirements of this chapter and any local subdivision ordinance applicable at the time of approval or conditional approval of the tentative map and any rulings made thereunder. If the map does not conform, the legislative body shall disapprove the map.

(b) If the legislative body does not approve or disapprove the map within the prescribed time, or any authorized extension thereof, and the map conforms to all requirements and rulings, it shall be deemed approved, and the clerk of the legislative body shall certify or state its approval thereon.

(c) The meeting at which the legislative body receives the map shall be the date on which the clerk of the legislative body receives the map.

SEC. 17. Section 66463 of the Government Code is amended to read:

66463. (a) Except as otherwise provided for in this code, the procedure for processing, approval, conditional approval, or disapproval and filing of parcel maps and modifications thereof shall be as provided by local ordinance. The provisions of Sections 66477.1, 66477.2, and 66477.3 relating to dedications and offers of dedication on final maps, shall apply to dedications and offers of dedications on

parcel maps.

(b) Whenever a local agency provides, by ordinance, for the approval, conditional approval, or disapproval of parcel maps by the county engineer, surveyor, or other designated official, the local agency may also, by ordinance, provide that the officer may accept or reject dedications and offers of dedication that are made by a statement on the map.

(c) Whenever a local agency provides, by ordinance, for the approval of parcel maps by the legislative body, the parcel maps shall be filed pursuant to the procedure for final maps as prescribed by Sections 66457 and 66458.

SEC. 18. Section 66464 of the Government Code is amended to read:

66464. (a) Unless otherwise provided by the county, if the final map or map parcel is not subject to Section 66493, after the approval by the city of a final map of a subdivision or a parcel map, the city clerk shall transmit the map to the county recorder.

(b) If a final map or parcel map is subject to Section 66493, after all certificates or statements and security required under Section 66493 have been filed and deposited with the clerk of the board of supervisors and approved by the county, the clerk of the board of supervisors shall certify or state that the certificates and statements have been filed and deposits have been made and shall transmit the final map or parcel map to the county recorder.

(c) After the approval by the county of a final or parcel map of a subdivision within unincorporated territory, the map shall be transmitted ultimately to the county recorder.

SEC. 19. Section 66477.1 of the Government Code is amended to read:

66477.1. (a) At the time the legislative body approves a final map, it shall also accept, accept subject to improvement, or reject any offer of dedication. The clerk of the legislative body shall certify or state on the map the action by the legislative body.

(b) The legislative body of a county may accept into the county road system, pursuant to Section 941 of the Streets and Highways Code, any road for which an offer of dedication has been accepted or accepted subject to improvements.

SEC. 20. Section 66492 of the Government Code is amended to read:

66492. Prior to the filing of the final map or parcel map with the legislative body, the subdivider shall, in accordance with procedures established by the county, file with the county recorder of the county in which any part of the subdivision is located, a certificate or statement from the official computing redemptions in any public agency in which any part of the subdivision is located, showing that, according to the records of that office, there are no liens against the subdivision or any part thereof for unpaid, state, county, municipal or local taxes or special assessments collected as taxes, except taxes or special assessments not yet payable.

SEC. 21. Section 66493 of the Government Code is amended to read:

66493. (a) Whenever any part of the subdivision is subject to a lien for taxes or special assessments collected as taxes which are not yet payable, the final map or parcel map shall not be recorded until the owner or subdivider does both of the following:

(1) Files with the clerk of the board of supervisors of the county wherein any part of the subdivision is located a certificate or statement prepared by the appropriate state or local official giving his or her estimate of those taxes or assessments.

(2) Executes and files with the clerk of the board of supervisors of the county wherein any part of the subdivision is located, security conditioned upon the payment of all state, county, municipal, and local taxes and the current installment of principal and interest of all special assessments collected as taxes, which at the time the final map is recorded are a lien against the property, but which are not yet payable.

(b) If the land being subdivided is a portion of a larger parcel shown on the last preceding tax roll as a unit, the security for payment of taxes need be only for the sum which may be determined by the county to be sufficient to pay the current and delinquent taxes on the land being subdivided, together with all accrued penalties and costs if those taxes have been or are allowed to become delinquent. Separate assessor's parcel numbers shall be given to the portion of the larger parcel which is not within the proposed subdivision and to the parcel or parcels which are within the proposed subdivision.

If the land being subdivided is tax-defaulted, it may be redeemed without the redemption of the remainder of the larger parcel of which it is a part pursuant to the Revenue and Taxation Code as if it were held in ownership separate from and other than the ownership of the remainder.

(c) Whenever land subject to a special assessment or bond which may be paid in full is divided by the line of a lot or parcel of the subdivision, that assessment or bond shall be paid in full, or security shall be filed with the clerk of the board of supervisors, payable to the county as trustee for the assessment bondholders for the payment of the special assessment or bond. This section does not apply to bonds issued under the Improvement Bond Act of 1915, which is provided for in Division 10 (commencing with Section 8500) of the Streets and Highways Code.

(d) In computing the amount of security for "taxes" in subdivision (a) or "current taxes" in subdivision (b), it shall only be necessary to consider amounts shown on the regular assessment roll or shown on any supplemental rolls prepared pursuant to Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

SEC. 22. Section 66493 of the Government Code is amended to read:

66493. (a) Whenever any part of the subdivision is subject to a

lien for taxes or special assessments collected as taxes which are not yet payable, the final map or parcel map shall not be recorded until the owner or subdivider does both of the following:

(1) Files with the clerk of the board of supervisors of the county wherein any part of the subdivision is located a certificate or statement prepared by the appropriate state or local official giving his or her estimate of those taxes or assessments.

(2) Executes and files with the clerk of the board of supervisors of the county wherein any part of the subdivision is located, security conditioned upon the payment of all state, county, municipal, and local taxes and the current installment of principal and interest of all special assessments collected as taxes, which at the time the final map is recorded are a lien against the property, but which are not yet payable.

(b) If the land being subdivided is a portion of a larger parcel shown on the last preceding tax roll as a unit, the security for payment of taxes need be only for the sum which may be determined by the county to be sufficient to pay the current and delinquent taxes on the land being subdivided, together with all accrued penalties and costs if those taxes have been or are allowed to become delinquent. Separate assessor's parcel numbers shall be given to the portion of the larger parcel which is not within the proposed subdivision and to the parcel or parcels which are within the proposed subdivision.

If the land being subdivided is tax-defaulted, it may be redeemed without the redemption of the remainder of the larger parcel of which it is a part pursuant to the Revenue and Taxation Code as if it were held in ownership separate from and other than the ownership of the remainder.

(c) Whenever land subject to a special assessment or bond which may be paid in full is divided by the line of a lot or parcel of the subdivision, that assessment or bond shall be paid in full, or security shall be filed with the clerk of the board of supervisors, payable to the county as trustee for the assessment bondholders for the payment of the special assessment or bond.

(d) Whenever land subject to a special assessment for payment of a bond would be divided by the line of a lot or parcel of a subdivision, and which is not paid in full or secured pursuant to subdivision (c), the final map or parcel map shall not be recorded until the owner or subdivider files with the clerk of the board of supervisors of the county a certificate prepared by the clerk of the legislative body that created the assessment district. The certificate shall certify that the legislative body has determined that provision has been made for segregation of the responsibility of each of the proposed new parcels for a portion of the assessment payment obligation in the manner provided in the statute pursuant to which the assessments were levied or to which the bonds were issued.

(e) In computing the amount of security for "taxes" in subdivision (a) or "current taxes" in subdivision (b), it shall only be necessary to consider amounts shown on the regular assessment roll or shown

on any supplemental rolls prepared pursuant to Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 of the Revenue and taxation Code.

SEC. 23. Section 66499.23 of the Government Code is amended to read:

66499.23. The petition shall be accompanied by a new map showing the boundaries of the subdivision as it appears after the exclusion and alteration. The new map shall designate as numbered or lettered parcels those portions excluded and show the acreage of each parcel. If the map can be compiled from data available, an actual field survey shall not be required. If the map meets with the approval of the county surveyor, a statement by an engineer or surveyor shall not be required.

SEC. 24. The amendments to Section 66499.23 of the Government Code in Section 23 of this act shall not become operative if Senate Bill No. 654 of the 1987–88 Regular Session is enacted, becomes effective on or before January 1, 1988, and repeals Section 66499.23 of the Government Code.

SEC. 25. Section 22 of this bill incorporates amendments to Section 66493 of the Government Code proposed by both this bill and SB 837. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 66493 of the Government Code, and (3) this bill is enacted after SB 837, in which case Section 21 of this bill shall not become operative.

CHAPTER 983

An act to amend Section 76.3 of the Harbors and Navigation Code, relating to boating.

[Approved by Governor September 22, 1987 Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 76.3 of the Harbors and Navigation Code is amended to read:

76.3. (a) The department may make loans to private marina owners for construction costs, not including planning, design, and other similar expenses, to develop a recreational marina. Loan funds from the department shall be utilized for berthing facilities, dredging, parking, public access facilities, restrooms, vessel pumpout facilities, utilities, landscaping, and other incidental boating-related amenities.

(b) No loan made by the department to a private marina owner shall exceed 25 percent of the funds annually budgeted for purposes of this article.

(c) The department shall not make a loan to a recreational marina that restricts access or bars the public other than what is consistent with general commercial business practices.

(d) Any private marina owner who purchases facilities previously developed with a department loan is eligible to apply for a new construction loan from the department.

CHAPTER 984

An act to amend Sections 25197, 25197.1, 25197.2, and 25197.3 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 25197 of the Health and Safety Code is amended to read:

25197. (a) The Legislature hereby finds and declares as follows:

(1) The United States Environmental Protection Agency has estimated that 90 percent of the 9 to 10 million metric tons of hazardous waste produced in California each year is improperly disposed.

(2) Approximately 50 percent of California's drinking water comes from underground water supplies which are highly susceptible to contamination from hazardous waste.

(3) Prosecution for violators of hazardous waste laws requires a specialized team of investigators and attorneys to detect, investigate, and prosecute these violators.

(b) It is, therefore, the intent of the Legislature in enacting this article to increase the effectiveness of local and state hazardous waste enforcement activities.

SEC. 2. Section 25197.1 of the Health and Safety Code is amended to read:

25197.1. (a) The director shall establish a Hazardous Waste Enforcement Unit within the department and shall appoint an enforcement coordinator to administer that unit and carry out the duties specified in subdivision (b).

(b) The enforcement coordinator shall do all of the following:

(1) Require that information which the department receives concerning a violation of this chapter or any regulation or order issued pursuant to this chapter is routinely and expeditiously transmitted from the department to the appropriate city attorney or district attorney, and to the Attorney General.

(2) Make recommendations of persons to be awarded payment pursuant to Section 25191.7.

(3) Make annual recommendations to the Governor and the

Legislature of statutory changes to increase the capability of city attorneys, district attorneys, and the Attorney General to prosecute violations of this chapter and any other law or regulation relating to hazardous waste, including needed training, assistance, and coordination programs.

(4) Submit an annual report to the Governor and the Legislature concerning all specific actions taken during that year by the enforcement coordinator and the Hazardous Waste Strike Force to carry out this article and the results obtained from those actions in increasing the effectiveness of local and state hazardous waste enforcement activities.

(5) Establish and maintain a toll-free telephone number, operating during the regular working hours of the department, which is available to the public to report information concerning violations of this chapter and any other hazardous waste statutes and regulations. The department shall screen calls for violations and shall refer information concerning potential violations within three working days to the regional office of the department, the office of the city attorney, the district attorney, or the Attorney General, as appropriate.

(6) Establish a program to publicize the toll-free telephone number.

(c) Nothing in this article limits the authority of a city attorney, a district attorney, or the Attorney General to investigate or prosecute violations of hazardous waste laws or regulations.

(d) Nothing in this article limits the authority of the department or any agency specified in subdivision (a) of Section 25197.2 to request that a civil or criminal action be brought by a city attorney, a district attorney, or the Attorney General under any other law or regulation.

SEC. 3. Section 25197.2 of the Health and Safety Code is amended to read:

25197.2. (a) The department shall establish a statewide Hazardous Waste Strike Force which shall consist of a representative from each of the following agencies:

(1) The Department of Transportation.
(2) The Department of Industrial Relations.
(3) The Department of Food and Agriculture.
(4) The State Water Resources Control Board.
(5) The State Air Resources Board.
(6) The Department of the California Highway Patrol.
(7) The State Fire Marshal.
(8) The California Waste Management Board.
(9) The Department of Fish and Game.
(10) The Department of Forestry.
(11) The Office of Emergency Services.
(12) The State Department of Health Services.
(13) The Attorney General.

(b) The director, or the director's designee, shall direct and

coordinate the activities of the Hazardous Waste Strike Force.

(c) The Hazardous Waste Strike Force shall do all of the following:

(1) Recommend standardized programs among the agencies represented on the Hazardous Waste Strike Force for the purposes of uniformly enforcing state hazardous waste statutes and regulations and reporting violators of these statutes and regulations.

(2) Recommend programs to publicize and improve the statewide telephone number established pursuant to paragraph (5) of subdivision (b) of Section 25197.1.

(3) Recommend local and regional programs to report information concerning violations of this chapter and any other hazardous waste statutes and regulations.

SEC. 4. Section 25197.3 of the Health and Safety Code is amended to read:

25197.3. This article shall be funded from the department's existing resources.

CHAPTER 985

An act to amend Sections 65940, 65941.5, 65943, and 65956 of, and to add Section 65943 to, the Government Code, relating to development projects.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 65940 of the Government Code is amended to read:

65940. Each state agency and each local agency shall compile one or more lists which shall specify in detail the information which will be required from any applicant for a development project. Each local agency shall revise the list of information required from an applicant to include a certification of compliance with Section 65962.5, and the statement of application required by Section 65943. Copies of the information, including the statement of application required by Section 65943, shall be made available to all applicants for development projects and to any person who requests the information.

SEC. 2. Section 65941.5 of the Government Code is amended to read:

65941.5. Each public agency shall notify applicants for development permits of the time limits established for the review and approval of development permits pursuant to Article 3 (commencing with Section 65940) and Article 5 (commencing with Section 65950), of the requirements of subdivision (e) of Section 65962.5, and of the public notice distribution requirements under

applicable provisions of law. The public agency shall also notify applicants regarding the provisions of Section 65961. The public agency may charge applicants a reasonable fee not to exceed the amount reasonably necessary to provide the service required by this section. If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit.

SEC. 3. Section 65943 of the Government Code is amended to read:

65943. (a) Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.

(b) Not later than 30 calendar days after receipt of the submitted materials, the public agency shall determine in writing whether they are complete and shall immediately transmit that determination to the applicant. If the written determination is not made within that 30-day period, the application together with the submitted materials shall be deemed complete for purposes of this chapter.

(c) If the application together with the submitted materials are determined not to be complete pursuant to subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both.

There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-day period. Notwithstanding a decision pursuant to subdivision (b) that the application and submitted materials are not complete, if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall

be deemed complete for the purposes of this chapter.

(d) Nothing in this section precludes an applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section.

(e) This section shall become operative on July 1, 1985, and shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1991, deletes or extends that date.

SEC. 4. Section 65943 is added to the Government Code, to read:

65943. Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit its determination to the applicant for the development project. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. In the event that the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete. This section shall become operative on January 1, 1991.

SEC. 5. Section 65956 of the Government Code is amended to read:

65956. (a) If any provision of law requires the lead agency or responsible agency to provide public notice of the development project or to hold a public hearing, or both, on the development project and the agency has not provided the public notice or held the hearing, or both, at least 60 days prior to the expiration of the time limits established by Sections 65950 and 65952, the applicant or his or her representative may file an action pursuant to Section 1085 of the Code of Civil Procedure to compel the agency to provide the public notice or hold the hearing, or both, and the court shall give the proceedings preference over all other civil actions or proceedings, except older matters of the same character.

(b) In the event that a lead agency or a responsible agency fails to act to approve or to disapprove a development project within the time limits required by this article, the failure to act shall be deemed approval of the permit application for the development project. However, the permit shall be deemed approved only if the public notice required by law has occurred. If the applicant has provided seven days advance notice to the permitting agency of the intent to provide public notice, then no earlier than 60 days from the expiration of the time limits established by Sections 65950 and 65952, an applicant may provide the required public notice using the distribution information provided pursuant to Section 65941.5. If the applicant chooses to provide public notice, that notice shall include a description of the proposed development substantially similar to the descriptions which are commonly used in public notices by the

permitting agency, the location of the proposed development, the permit application number, the name and address of the permitting agency, and a statement that the project shall be deemed approved if the permitting agency has not acted within 60 days. If the applicant has provided the public notice required by this section, the time limit for action by the permitting agency shall be extended to 60 days after the public notice is provided. If the applicant provides notice pursuant to this section, the permitting agency shall refund to the applicant any fees which were collected for providing notice and which were not used for that purpose.

(c) Failure of an applicant to submit complete or adequate information pursuant to Sections 65943 to 65946, inclusive, may constitute grounds for disapproving a development project.

(d) Nothing in this section shall diminish the permitting agency's legal responsibility to provide, where applicable, public notice and hearing before acting on a permit application.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 986

An act to amend and repeal Sections 545 and 34500 of, and to add Sections 336, 545, 12523.5, 34500, and 34501.8 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 22, 1987 Filed with Secretary of State September 23, 1987]

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

SECTION 1. It is the intent of the Legislature that, on and after July 1, 1988, general public paratransit operations be employed to provide service where it is most feasible and cost-effective and where existing public transit services cannot meet the needs of the community. It is the further intent of the Legislature that those operations not be viewed as a replacement or alternative to existing schoolbus services.

SEC. 2. Section 336 is added to the Vehicle Code, to read:

336. "General public paratransit vehicle" is any motor vehicle designed for carrying no more than 19 persons and the driver, and which provides local transportation to the general public under the exclusive jurisdiction of a publicly owned and operated transit system through one of the following modes: dial-a-ride, subscription service, or route-deviated bus service. Vehicles used in the exclusive transportation of the handicapped, as defined by Section 22511.5, or

of persons 55 years of age or older are not general public paratransit vehicles.

This section shall become operative July 1, 1988.

SEC. 3. Section 545 of the Vehicle Code is amended to read:

545. A "schoolbus" is any motor vehicle designed, used, or maintained for the transportation of 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, except the following:

(a) A motor vehicle of any type carrying only members of the household of the owner thereof.

(b) A motortruck transporting pupils who are seated only in the passenger compartment, and a passenger vehicle designed for and when actually carrying not more than 10 persons, including the driver, except any such vehicle or truck transporting two or more handicapped pupils confined to wheelchairs.

(c) A motor vehicle operated by a common carrier, or by and under the exclusive jurisdiction of a publicly owned or operated transit system, only during the time it is on a scheduled run and is available to the general public or on a run scheduled in response to a request from a handicapped pupil confined to a wheelchair, or from a parent of the handicapped pupil, for transportation to or from nonschool activities; provided, that the motor vehicle is designed for and actually carries not more than 16 persons and the driver, is available to eligible persons of the general public, and the school does not provide the requested transportation service.

(d) A school pupil activity bus as defined in Section 546.

(e) A motor vehicle operated by a carrier licensed by the Interstate Commerce Commission which is transporting pupils on a school activity entering or returning to the state from another state or country.

(f) A youth bus as defined in Section 680.

(g) Notwithstanding any other provisions of this section, the governing board of a district maintaining a community college may, by resolution, designate any motor vehicle operated by or for the district, a schoolbus within the meaning of this section, if it is primarily used for the transportation of community college students to or from a public community college or to or from public community college activities. The designation shall not be effective until written notification thereof has been filed with the Department of the California Highway Patrol.

(h) A state-owned motor vehicle being operated by a state employee upon the driveways, paths, parking facilities, or grounds specified in Section 21113 that are under the control of a state hospital under the jurisdiction of the State Department of Developmental Services where the posted speed limit is not more than 20 miles per hour. The motor vehicle may also be operated for a distance of not more than one-quarter mile upon a public street or highway that runs through the grounds of a state hospital under the jurisdiction of the State Department of Developmental Services, if

the posted speed limit on the public street or highway is not more than 25 miles per hour and if all traffic is regulated by posted stop signs or official traffic control signals at the points of entry and exit by the motor vehicle.

This section is repealed on July 1, 1988.

SEC. 3.5. Section 545 is added to the Vehicle Code, to read:

545. A "schoolbus" is any motor vehicle designed, used, or maintained for the transportation of 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, except the following:

(a) A motor vehicle of any type carrying only members of the household of the owner thereof.

(b) A motortruck transporting pupils who are seated only in the passenger compartment, and a passenger vehicle designed for and when actually carrying not more than 10 persons, including the driver, except any such vehicle or truck transporting two or more handicapped pupils confined to wheelchairs.

(c) A motor vehicle operated by a common carrier, or by and under the exclusive jurisdiction of a publicly owned or operated transit system, only during the time it is on a scheduled run and is available to the general public or on a run scheduled in response to a request from a handicapped pupil confined to a wheelchair, or from a parent of the handicapped pupil, for transportation to or from nonschool activities; provided, that the motor vehicle is designed for and actually carries not more than 16 persons and the driver, is available to eligible persons of the general public, and the school does not provide the requested transportation service.

(d) A school pupil activity bus as defined in Section 546.

(e) A motor vehicle operated by a carrier licensed by the Interstate Commerce Commission which is transporting pupils on a school activity entering or returning to the state from another state or country.

(f) A youth bus as defined in Section 680.

(g) Notwithstanding any other provisions of this section, the governing board of a district maintaining a community college may, by resolution, designate any motor vehicle operated by or for the district, a schoolbus within the meaning of this section, if it is primarily used for the transportation of community college students to or from a public community college or to or from public community college activities. The designation shall not be effective until written notification thereof has been filed with the Department of the California Highway Patrol.

(h) A state-owned motor vehicle being operated by a state employee upon the driveways, paths, parking facilities, or grounds specified in Section 21113 that are under the control of a state hospital under the jurisdiction of the State Department of Developmental Services where the posted speed limit is not more than 20 miles per hour. The motor vehicle may also be operated for a distance of not more than one-quarter mile upon a public street or

highway that runs through the grounds of a state hospital under the jurisdiction of the State Department of Developmental Services, if the posted speed limit on the public street or highway is not more than 25 miles per hour and if all traffic is regulated by posted stop signs or official traffic control signals at the points of entry and exit by the motor vehicle.

(i) A general public paratransit vehicle as defined in Section 336, provided that the general public paratransit vehicle does not duplicate existing schoolbus service, does not transport a public school pupil at or below the 12th grade level to a destination outside of that pupil's school district, and is not used to transport public school pupils in areas where schoolbus services were available during the 1986–87 school year. In areas where expanded school services require expanded transportation of public school pupils, as determined by the governing board of a school district, general public paratransit vehicles shall not be used to transport those pupils for a period of three years from the date that a need for expansion is identified. For purposes of this section, a pupil is defined as a student at or below the 12th grade level who is being transported to a mandated school activity.

This section shall become operative July 1, 1988.

SEC. 4. Section 12523.5 is added to the Vehicle Code, to read:

12523.5. (a) No person shall operate a general public paratransit vehicle unless he or she has in his or her possession a valid driver's license of the appropriate class and a certificate issued by the department to permit the operation of a general public paratransit vehicle.

(b) Applicants for a certificate to drive a general public paratransit vehicle shall pay a fee of twelve dollars ($12) to the Department of the California Highway Patrol and shall present evidence that they have successfully completed a driver training course consisting of a minimum of 40 hours of instruction within the previous two years. The instruction shall have covered applicable laws and regulations and defensive driving practices, a minimum of eight hours of certified defensive driving, and a minimum of 20 hours of behind-the-wheel training in a vehicle to be used as a general public paratransit vehicle. Applicants seeking to renew a certificate valid for driving a general public paratransit vehicle 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. 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 general public paratransit vehicle for the causes specified in regulations adopted by the Department of the California Highway Patrol for schoolbus drivers.

(d) An operator of a general public paratransit vehicle shall do all of the following:

(1) Use seat belts.

(2) Refrain from smoking.

(3) Report any accident reportable under Section 16000 to the Department of the California Highway Patrol.

This section shall become operative July 1, 1988.

SEC. 5. Section 34500 of the Vehicle Code is amended to read:

34500. The Department of the California Highway Patrol shall regulate the safe operation of the following vehicles:

(a) Motortrucks of three or more axles which are more than 6,000 pounds unladen weight.

(b) Truck tractors.

(c) Buses, schoolbuses, and youth buses.

(d) Trailers and semitrailers designed or used for the transportation of more than 10 persons, and the towing motor vehicle.

(e) Trailers and semitrailers, excluding camp trailers, trailer coaches, and utility trailers, pole or pipe dollies, auxiliary dollies, and logging dollies used in combination with vehicles listed in subdivisions (a), (b), (c), and (d). This subdivision does not apply to camp trailers, trailer coaches, and utility trailers.

(f) Any combination of a motortruck and any vehicle or vehicles set forth in subdivision (e) that exceeds 40 feet in length when coupled together.

(g) Any truck, or any combination of a truck and any other vehicle, transporting hazardous materials.

(h) Manufactured homes which, when moved upon the highway, are required to be moved under a permit as specified in Section 35780 or 35790.

(i) A park trailer, as defined in subdivision (f) of Section 799.24 of the Civil Code, which, when moved upon a highway, is required to be moved under a permit pursuant to Section 35780.

(j) Any other motortruck not specified in subdivisions (a) to (h), inclusive, that is regulated by the Public Utilities Commission or the Interstate Commerce Commission, but only for matters relating to hours of service and logbooks of drivers.

This section is repealed on July 1, 1988.

SEC. 5.5. Section 34500 is added to the Vehicle Code, to read:

34500. The Department of the California Highway Patrol shall regulate the safe operation of the following vehicles:

(a) Motortrucks of three or more axles which are more than 6,000 pounds unladen weight.

(b) Truck tractors.

(c) Buses, schoolbuses, youth buses, and general public paratransit vehicles.

(d) Trailers and semitrailers designed or used for the transportation of more than 10 persons, and the towing motor vehicle.

(e) Trailers and semitrailers, excluding camp trailers, trailer coaches, and utility trailers, pole or pipe dollies, auxiliary dollies, and logging dollies used in combination with vehicles listed in subdivisions (a), (b), (c), and (d). This subdivision does not apply to camp trailers, trailer coaches, and utility trailers.

(f) Any combination of a motortruck and any vehicle or vehicles set forth in subdivision (e) that exceeds 40 feet in length when coupled together.

(g) Any truck, or any combination of a truck and any other vehicle, transporting hazardous materials.

(h) Manufactured homes which, when moved upon the highway, are required to be moved under a permit as specified in Section 35780 or 35790.

(i) A park trailer, as defined in subdivision (f) of Section 799.24 of the Civil Code, which, when moved upon a highway, is required to be moved under a permit pursuant to Section 35780.

(j) Any other motortruck not specified in subdivisions (a) to (h), inclusive, that is regulated by the Public Utilities Commission or the Interstate Commerce Commission, but only for matters relating to hours of service and logbooks of drivers.

This section shall become operative July 1, 1988.

SEC. 6. Section 34501.8 is added to the Vehicle Code, to read:

34501.8. (a) The Department of the California Highway Patrol shall inspect every general public paratransit vehicle, as defined in Section 336, at least once each year to certify that its condition complies with all provisions of law, including being equipped with a fire extinquisher, first-aid kit, and three-point tie downs for transporting wheelchair passengers.

(b) No person shall drive any general public paratransit vehicle 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 general public paratransit vehicle and found that on the date of inspection the general public paratransit vehicle 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 shall determine a fee and method of collection for the annual inspection of general public paratransit vehicles. The fee, established by regulation, shall be sufficient to cover the cost to the department for general public paratransit vehicle inspections. All fees received shall be deposited in the Motor Vehicle Account in the State Transportation Fund.

This section shall become operative July 1, 1988.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the

only costs 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 987

An act to amend Sections 4527, 4551.5, 4562.5, 4562.7, and 4584 of, to amend, repeal, and add Section 4585 of, and to add Sections 4551.7, 4562.9, and 4563.5 to, the Public Resources Code, relating to forest practices.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 4527 of the Public Resources Code is amended to read:

4527. "Timber operations" means the cutting or removal or both of timber or other solid 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, firebreaks, stream crossings, landings, skid trails, beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities conducted after January 1, 1988, but excluding preparatory work such as treemarking, surveying, or roadflagging. Removal or harvest of incidental vegetation from timberlands, such as berries, ferns, greenery, mistletoe, herbs, and other products, which action cannot normally be expected to result in a threat to forest, air, water, or soil resources, does not constitute timber operations.

SEC. 2. Section 4551.5 of the Public Resources Code is amended to read:

4551.5. Rules and regulations shall apply to the conduct of timber operations and shall include, but shall not be limited to, measures for fire prevention and control, for soil erosion control, for site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities conducted after January 1, 1988, for water quality and watershed control, for flood control, for stocking, for protection against timber operations which unnecessarily destroy young timber growth or timber productivity of the soil, for prevention and control of damage by forest insects, pests, and disease, for the protection of natural and scenic qualities in special treatment areas identified pursuant to subdivision (b) of Section 30417, and for the preparation of timber harvesting plans. In developing these rules, the board shall solicit and consider

recommendations from the department, recommendations from the Department of Fish and Game relating to the protection of fish and wildlife, recommendations from the State Water Resources Control Board and the California regional water quality control boards relating to water quality, recommendations from the State Air Resources Board and local air pollution control districts relating to air pollution control, and recommendations of the California Coastal Commission relating to the protection of natural and scenic coastal zone resources in special treatment areas.

SEC. 3. Section 4551.7 is added to the Public Resources Code, to read:

4551.7. The board shall, on or before November 1, 1988, adopt regulations pertaining to site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities conducted after January 1, 1988.

SEC. 4. Section 4562.7 of the Public Resources Code is amended to read:

4562.7. The purpose of this section is to ensure the protection of beneficial uses that are derived from the physical form, water quality, and biological capability of streams. To these ends, in addition to the rules provided for in Section 4551.5, the board shall adopt rules for control of timber operations which will result or threaten to result in unreasonable effects on the beneficial uses of the waters of the state. The rules shall include rules for:

(a) The disposal of petroleum products, sanitary wastes, refuse, and cleaning agents in proper dumps or waste treatment facilities to prevent them from entering streams.

(b) Construction of logging road and tractor trail stream crossings to assure substantially unimpaired flow of water and to assure free passage of fish both upstream and downstream.

(c) Minimizing damage to unmerchantable streamside vegetation, particularly hardwood trees.

(d) Minimizing damage to streambeds or banks resulting from skidding or hauling logs through, across, or into streams, by operating tractors or other heavy equipment in or near streambeds, or by construction of log landings or logging roads in or near the channels of streams.

(e) Control of slash, debris, fill, and side cast earth, resulting from timber operations, which may be carried into streams.

(f) Minimizing the effects of erosion on watercourses and lakes by all of the following:

(1) Installation and maintenance of drainage facilities and soil stabilization treatments as required on timber operations.

(2) Planned abandonment of roads and landings.

(3) Maintenance of installed drainage facilities and soil stabilization treatments on skid trails, roads, and landings for a period of at least one year after filing of the work completion report, provided the report is approved.

SEC. 5. Section 4562.9 is added to the Public Resources Code, to

read:

4562.9. The board shall, on or before November 1, 1988, adopt regulations requiring maintenance of installed drainage facilities and soil stabilization treatments on skid trails, roads, and landings for a period of at least one year, but not to exceed three years, after filing of the work completion report, provided the report is approved.

SEC. 6. Section 4563.5 is added to the Public Resources Code, to read:

4563.5. The department shall, on or before July 1, 1989, report to the Governor and the Legislature on the adequacy of existing resource conservation standards in meeting the objectives of this chapter and achieving the goal of maximum sustained production of high-quality timber products, as specified in Section 4513. The report shall include all of the following:

(a) A description of the status of regeneration at a representative number of timber harvesting sites, within each forest practice district, that were previously determined by the department to be adequately stocked.

(b) Information on the type of silvicultural method originally described in the timber harvesting plan for each site examined.

(c) Any recommendations for regulations or legislation changing the requirements of this chapter, as they pertain to existing resource conservation standards, and limitations, if any, on allowable harvest levels for forest land where regeneration is not occurring consistent with the goals specified in Section 4513.

SEC. 7. Section 4584 of the Public Resources Code is amended to read:

4584. Upon determining that the exemption is consistent with the purposes of this chapter, the board may exempt from the provisions of this chapter or portions thereof, any person engaged in forest management whose activities are limited to any of the following:

(1) The cutting or removal of trees for the purpose of constructing or maintaining a right-of-way for utility lines.

(2) The planting, growing, nurturing, shaping, shearing, removal, or harvest of immature trees for Christmas trees or other ornamental purposes or minor forest products, including fuelwood.

(3) The cutting or removal of dead, dying, or diseased trees of any size.

(4) Site preparation.

(5) Maintenance of drainage facilities and soil stabilization treatments.

SEC. 8. Section 4585 of the Public Resources Code is amended to read:

4585. (a) Within one month after completion of the work described in the timber harvesting plan, excluding work for stocking, site preparation, or maintenance of drainage facilities and soil stabilization treatments on skid trails, roads, and landings after the plan period a report shall be filed by the timber owner or the owner's

agent with the department that all work, except stocking, site preparation, or maintenance of drainage facilities and soil stabilization, has been completed.

(b) If all of the work described in the plan has not been completed, a report may be filed annually with respect to a portion of the area covered by the plan which has been completed. The portion completed shall be adequately identified on a map submitted with the report.

(c) This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1990, deletes or extends that date.

SEC. 9. Section 4585 is added to the Public Resources Code, to read:

4585. Within one month after completion of the work described in the timber harvesting plan, excluding work for stocking, site preparation, or maintenance of drainage facilities and soil stabilization treatments on skid trails, roads, and landings after the plan period, a report shall be filed by the timber owner or the owner's agent with the department that all work, except stocking, site preparation, or maintenance of drainage facilities and soil stabilization has been completed.

This section shall become operative January 1, 1990.

CHAPTER 988

An act relating to schools.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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 provide for a complete procedure to allow the reorganization permitted by this act pursuant to all of the provisions of this act, and to ensure that each of the school officials of each affected district undertake his or her duties and responsibilities in a cooperative and positive manner, that each pupil receive a quality education within the legal boundaries of the appropriate districts authorized under this act, and that the reorganization permitted by this act does not interrupt or impede the education by the Fullerton Joint Union High School District of pupils in grades 9 to 12, inclusive, who reside within the boundaries of the Yorba Linda Elementary School District as it exists on the effective date of this act. It is further the intent of the Legislature that all pupils of high school age who now, or in the future, reside within the boundaries of the Yorba Linda Elementary School District, as it exists on the effective date of this act, receive their high school education for grades 9 to 12, inclusive, in the

educational programs provided by the Fullerton Joint Union High School District. For this purpose, all districts concerned are hereby encouraged to cooperate to the fullest extent to ensure that the transition of pupils from the elementary schools of the Placentia Unified School District, if reorganized pursuant to this act, to the high schools of the Fullerton Joint Union High School District will take place in an orderly manner, and that the educational program in the elementary schools will support and, to the greatest extent possible, be compatible with, and supportive of, the educational program of the Fullerton Joint Union High School District. With regard to pupils residing within the Yorba Linda Elementary School District, under the boundaries existing on the effective date of this act, the Placentia Unified School District shall have the same relationship to the Fullerton Joint Union High School District as do component elementary school districts within the Fullerton Joint High School District.

SEC. 2. Notwithstanding Chapter 3 (commencing with Section 35500) or Chapter 4 (commencing with Section 35700) of Part 21 of the Education Code, the boundaries of the Yorba Linda Elementary School District may be reorganized to become coterminous with the Placentia Unified School District, and thus merge those two districts into one new school district, by the performance of all of the following procedures:

(a) The governing boards of each of those two districts shall approve an action to reorganize pursuant to those chapters.

(b) A petition to reorganize, reflecting that approval, shall be filed with the Orange County Superintendent of Schools pursuant to subdivision (c) of Section 35700 of the Education Code.

(c) The county committee on school district organization shall hold one or more public hearings on the petition, pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, and shall, within 90 days of receipt of the petition by the county committee, unless a longer period of time is necessary to carry out the prescribed duties of the county committee, transmit the petition to the State Board of Education with its recommendation appended thereto.

(d) The State Board of Education shall hear the petition pursuant to Article 4 (commencing with Section 35750) of Chapter 4 of Part 21 of the Education Code.

(e) If the State Board of Education approves the petition for reorganization, it shall give notice to the Orange County Superintendent of Schools, who shall call an election on the petition in both the Placentia Unified School District and the Yorba Linda Elementary School District. The reorganization shall be deemed to be approved if approved by a majority of electors of each district voting in that election.

(f) The actual wording of the election proposition, regardless of the form of the ballot card, label, or other election device, and regardless of the system of voting used, shall read as follows:

ANNEXATION—YORBA LINDA SCHOOL DISTRICT TO PLACENTIA UNIFIED SCHOOL DISTRICT	YES	
Shall the Yorba Linda Elementary School District be annexed to the Placentia Unified School District for the purposes of educating pupils in kindergarten and grades 1 through 8 only?	NO	

SEC. 3. Notwithstanding any other provision of law, the Placentia Unified School District shall not, as a result of the reorganization permitted by this act, have any jurisdiction for any of the grades 9 to 12, inclusive, within the boundaries of the Yorba Linda Elementary School District, as the jurisdiction of the Yorba Linda Elementary School District existed upon the effective date of this act.

SEC. 4. The governing board of the Placentia Unified School District shall continue in existence, and shall serve as the governing board of the new district. The agreement shall include a provision for increasing the number of the governing board members from five to seven, for which purpose the governing board of the Yorba Linda Elementary School District shall designate two additional members to be appointed. Approval of the action to reorganize shall constitute the appointment of the designated additional two members, whose terms shall commence on the date of the first meeting of the governing board of the new district and shall terminate after a single term of two years, whereupon the number of governing board members of the Placentia Unified School District shall revert to five.

SEC. 5. Notwithstanding any other provision of law, no statutory provision permitting interdistrict attendance shall apply to pupils in grades 9 to 12, inclusive, who reside within the boundaries of the Yorba Linda Elementary School District, as it existed on the effective date of this act, except to the extent authorized by the governing board of the Fullerton Joint Union High School District.

SEC. 6. The following conditions and requirements shall apply in the event that the reorganization permitted under this act occurs.

(a) The Placentia Unified School District shall provide to the Orange County Superintendent of Schools a list of the names and addresses of all pupils in the district in kindergarten and grades 1 to 12, inclusive, including the names and addresses of the parents or guardians of these pupils, as of October 1 and March 1 of each year. This list shall be provided on or before the last day of October and March, respectively.

The list shall include and be sorted by the name, address, phone number, grade level, and age of each pupil, and the name, address, and phone number of the pupil's parent or legal guardian. Other

information mutually agreed to by the Placentia Unified School District and the Fullerton Joint Union High School District may also be provided.

The list shall include a certification by the superintendent of the Placentia Unified School District that, to the best of his or her knowledge, there are no pupils attending grades 9 to 12, inclusive, in the Placentia Unified School District who reside within the boundaries of the former Yorba Linda Elementary School District, as it existed on the effective date of this act, without the approval of the governing board of the Fullerton Joint Union High School District.

(b) The Orange County Superintendent of Schools shall make the information provided pursuant to subdivision (a) available to the Fullerton Joint Union High School District for the purposes of instructional planning, pupil services, communication with the parents of current and future pupils of the district, master planning, and the fulfillment of the intent and purposes of this act. For all other purposes, this information shall be confidential and not be made available to the public.

(c) The Orange County Superintendent of Schools shall review the information provided pursuant to subdivision (a) to ensure that all pupils residing within the boundaries of the former Yorba Linda Elementary School District, as it existed on the effective date of this act, and who are attending public schools in any of grades 9 to 12, inclusive, are attending schools in the Fullerton Joint Union High School District or have been authorized by the governing board of that district to attend schools outside of the Fullerton Joint Union High School District.

(d) The Placentia Unified School District shall establish and implement reasonable written procedures to ensure that pupils in grades 9 to 12, inclusive, who reside within the boundaries of the Yorba Linda Elementary School District, as it existed on the effective date of this act, do not attend the Placentia Unified School District without the approval of the governing board of the Fullerton Union High School District.

(e) (1) If either the Placentia Unified School District or the Fullerton Joint Union High School District determines that a pupil in any of the grades 9 to 12, inclusive, who resides within the boundaries of the Yorba Linda Elementary School District as it existed on the effective date of this act, is attending a school of the Placentia Unified School District without the authorization of the governing board of the Fullerton Joint Union High School District, that district shall so notify the Superintendent of Public Instruction.

(2) The Superintendent of Public Instruction shall, from the date of receiving that notice, and until that pupil commences attending the Fullerton Union High School District, or receives authorization from the governing board of that district to attend that school, withhold from the apportionments made to the Placentia Unified School District the amount of the apportionment for that pupil, and shall apportion to the Fullerton Joint Union High School District the

amount withheld.

(3) If it is determined that a pupil, without the authorization of the Fullerton Union High School District, had attended any of the grades 9 to 12, inclusive, in the Placentia Unified School District prior to the date of notification under paragraph (1) and that school officials in the Placentia Unified School District knew or reasonably should have known that the pupil resided within the boundaries of the Yorba Linda Elementary School District, as it existed on the effective date of this act, the Superintendent of Public Instruction shall withhold from the apportionments made to the Placentia Unified School District the amount of the apportionment for that pupil for the duration of that unauthorized attendance, not to exceed 36 calendar months, and shall apportion to the Fullerton Union High School District the amount of the withheld apportionments.

SEC. 7. The Placentia Unified School District shall, upon the conclusion of each fiscal year, pay to the Orange County Superintendent of Schools all costs incurred by the Orange County Superintendent of Schools for that fiscal year in administering, monitoring, and evaluating the enrollment information supplied to the Orange County Superintendent of Schools pursuant to Section 6 of this act. The amount of that payment shall be as agreed to by the Orange County Superintendent of Schools and the Placentia Unified School District or, absent that agreement, that amount determined to be a state mandate. This sum of money shall be adjusted annually by the inflation adjustment computed under Section 42238.1 of the Education Code.

SEC. 8. Notwithstanding Article 7 (commencing with Section 35560) of Chapter 3 of Part 20, all liquid and fixed assets of the Yorba Linda Elementary School District shall become the property of the Placentia Unified School District upon reorganization. All other liquid and fixed assets of the Fullerton Joint Union High School District shall remain the property of that district. In addition, the current bonded indebtedness assigned to respective parcels of property as of June 30, 1988, as to each of the affected districts, shall remain assigned until the bonds are retired.

SEC. 9. The action to organize school districts permitted by this act is deemed to be a project that may result in a substantial, or potentially substantial, adverse change in physical conditions within the area that will be affected by the action, for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 10. The authority to conduct an election pursuant to this act shall be for one election only and shall terminate unless the election is held before January 1, 1990. If the election is not held before January 1, 1990, this act shall remain in effect until January 1, 1990, and as of that date is repealed. If an election is held before January 1, 1990, and a majority of the voters of each of the districts do not approve the reorganization, this act shall remain in effect only until the date immediately following the date of the election, and as of that date is repealed. If an election is held before January 1, 1990, and the

majority of voters of each of the districts approve the reorganization authorized by this act, then this act shall remain in effect unless a later enacted statute provides otherwise.

SEC. 11. Due to the unique circumstances concerning the Fullerton Joint Union High School District, the Yorba Linda Elementary School District, and the Placentia Unified School District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. These circumstances are that the boundaries of the Yorba Linda Elementary School District are not contiguous to the Fullerton Joint Union High School District, of which it is a part, although they are contiguous to the Placentia Unified School District.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 989

An act to amend Sections 56046, 56800, 56828, 57026, 57051 and 91503 of, and to add Section 56047.5 to, the Government Code, relating to local government.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987]

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

SECTION 1. Section 56046 of the Government Code is amended to read:

56046. "Inhabited territory" means territory within which there reside 12 or more registered voters. The date on which the number of registered voters is determined is the date of the adoption of a resolution of application by the legislative body pursuant to Section 56800, if the legislative body has complied with subdivision (b) of that section, or the date a petition or other resolution of application is accepted for filing and a certificate of filing is issued by the executive officer. All other territory shall be deemed "uninhabited."

SEC. 2. Section 56047.5 is added to the Government Code, to read:

56047.5. "Interested agency" means each local agency which provides facilities or services in the affected territory that a subject agency would provide.

SEC. 3. Section 56800 of the Government Code is amended to read:

56800. (a) A proposal for a change of organization or a

reorganization may be made by the adoption of a resolution of application by the legislative body of an affected local agency.

(b) At least 20 days before the adoption of the resolution, the legislative body may give mailed notice of its intention to adopt a resolution of application to the commission and to each interested agency and each subject agency. The notice shall generally describe the proposal and the affected territory.

(c) Except for the provisions regarding signers and signatures, a resolution of application shall contain all of the matters specified for a petition in Section 56700 and shall be submitted with a plan for services prepared pursuant to Section 56653.

SEC. 4. Section 56828 of the Government Code is amended to read:

56828. (a) Any petitioner or legislative body desiring to initiate proceedings shall submit an application to the executive officer of the principal county.

(b) Immediately after receiving an application and before issuing a certificate of filing, the executive officer shall give mailed notice that the application has been received to each interested agency and each subject agency. The notice shall generally describe the proposal and the affected territory. The executive officer shall not be required to give notice pursuant to this subdivision if a local agency has already given notice pursuant to subdivision (b) of Section 56800.

(c) If a special district is, or as a result of a proposal will be, located in more than one county, the executive officer of the principal county shall immediately give the executive officer of each other affected county mailed notice that the application has been received. The notice shall generally describe the proposal and the affected territory.

(d) Except when a commission is the lead agency pursuant to Section 21067 of the Public Resources Code, the executive officer shall determine within 30 days of receiving an application whether the application is complete and acceptable for filing or whether the application is incomplete.

(e) The executive officer shall not accept an application for filing and issue a certificate of filing for at least 20 days after giving the mailed notice required by subdivision (b). The executive officer shall not be required to comply with this subdivision in the case of an application which meets the requirements of Section 56837 or in the case of an application for which a local agency has already given notice pursuant to subdivision (b) of Section 56800.

(f) If the appropriate fees have been paid, an application shall be deemed accepted for filing if no determination has been made by the executive officer within the 30-day period. An executive officer shall accept for filing, and file, any application submitted in the form prescribed by the commission and containing all of the information and data required pursuant to Section 56652.

(g) When an application is accepted for filing, the executive officer shall immediately issue a certificate of filing to the applicant.

A certificate of filing shall be in the form prescribed by the executive officer and shall specify the date upon which the proposal shall be heard by the commission. From the date of issuance of a certificate of filing, or the date upon which an application is deemed to have been accepted, whichever is earlier, an application shall be deemed filed pursuant to this division.

(h) If an application is determined not to be complete, the executive officer shall immediately transmit that determination to the applicant specifying those parts of the application which are incomplete and the manner in which they can be made complete.

(i) Following the issuance of the certificate of filing, the executive officer shall proceed to set the proposal for hearing and give published notice thereof as provided in this part. The date of the hearing shall be not more than 90 days after issuance of the certificate of filing or after the application is deemed to have been accepted, whichever is earlier. Notwithstanding Section 56106, the date for conducting the hearing, as determined pursuant to this subdivision, is mandatory.

SEC. 5. Section 57026 of the Government Code is amended to read:

57026. The mailed notice required to be given by Section 57025 shall contain all of the following information:

(a) A statement of the distinctive short form designation assigned by the commission to the proposal.

(b) A statement of the manner in which, and by whom, proceedings were initiated. However, a reference to the chief petitioners, if any, shall be sufficient where proceedings were initiated by a petition.

(c) A description of the exterior boundaries of the subject territory.

(d) A description of the particular change or changes of organization proposed for each of the subject districts or cities and new districts or new cities proposed to be formed, and any terms and conditions to be applicable. The description may include a reference to the commission's resolution making determinations for a full and complete description of the change of organization or reorganization, and the terms and conditions.

(e) A statement of the reason or reasons for the change of organization or reorganization as set forth in the proposal submitted to the commission.

(f) (1) Except as otherwise provided in paragraph (2), a statement of the time, date, and place of the hearing on the proposed change of organization or reorganization.

(2) Notwithstanding paragraph (1), if inhabited territory is proposed to be annexed to a city with more than 100,000 residents which is located in a county with a population of over 4,000,000 the date shall be at least 90 days, but not more than 105 days, after the date of adoption of the resolution initiating the proceedings. The resolution shall specify a date 90 days prior to the hearing when

registered voters may begin to file protests.

(g) If the subject territory is inhabited and the change of organization or reorganization provides for the submission of written protests, a statement that any owner of land within the territory, or any registered voter residing within the territory, may file a written protest against the proposal with the clerk of the conducting authority at any time prior to the conclusion of the hearing by the conducting authority on the proposal.

(h) If the subject territory is uninhabited and the change of organization or reorganization provides for submission of written protests, a statement that any owner of land within the territory may file a written protest against the proposal with the clerk of the conducting authority at any time prior to the conclusion of the hearing by the conducting authority on the proposal.

SEC. 6. Section 57051 of the Government Code is amended to read:

57051. At any time prior to the conclusion of the hearing in the notice given by the clerk, but not thereafter, any owner of land or any registered voter within inhabited territory proposed to be annexed or detached, or any owner of land within uninhabited territory proposed to be annexed or detached, may file a written protest against the annexation or detachment. Each written protest shall state whether it is made by a landowner or registered voter and the name and address of the owner of the land affected and the street address or other description sufficient to identify the location of the land or the name and address of the registered voter as it appears on the affidavit of registration. Protests may be made on behalf of an owner of land by an agent authorized in writing by the owner to act as agent with respect to that land. Protests may be made on behalf of a private corporation which is an owner of land by any officer or employee of the corporation without written authorization by the corporation to act as agent in making that protest.

Each written protest shall show the date that each signature was affixed to the protest. All signatures without a date or bearing a date prior to the date of publication of the notice shall be disregarded for purposes of ascertaining the value of any written protests.

SEC. 7. Section 91503 of the Government Code is amended to read:

91503. The property acquired pursuant to this article shall be suitable for, or shall evidence an obligation respecting, certain activities or uses. The activities or uses shall include one or more of the activities or uses described in subdivision (a) and, unless incidental to those activities or uses, shall not include any of the activities described in, and not excepted from, subdivision (b).

(a) (1) Industrial uses including, without limitation, assembling, fabricating, manufacturing, processing, or warehousing activities or motor carrier terminals with respect to any products of agriculture, forestry, mining, or manufacture, if these activities have demonstrated job creation or retention potential.

(2) Industrial park land acquisition and development activities undertaken on sites where one or more industrial users have permanently ceased operations resulting in a loss of employment, or construction of buildings and facilities of the types authorized in paragraphs (1), (3), and (4) on an industrial park site or sites which have been prepared for use by means of an Urban Development Action Grant.

(3) Energy development, production, collection, conversion from one form of energy to another, storage, or conservation activities, or energy transmission, transportation, or conveyance as distinguished from distribution activities.

(4) Research and development activities relating to commerce or industry, including, without limitation, professional, administrative, and scientific office and laboratory activities or uses.

(5) Visitor serving commercial facilities or transient visitor accommodation facilities located in one of the following:

(A) A city with a population of less than 50,000 persons within a county with a population of no more than 600,000 persons.

(B) An unincorporated portion of a county which has a population of less than 200,000 persons within a county with a population of no more than 600,000 persons.

For purposes of this paragraph, "visitor serving commercial facilities or transient visitor accommodation facilities" shall include, but shall not be limited to, hotels, motels, restaurants, and recreational and shopping facilities, the primary purpose of which is serving visitors.

(6) Child day care centers providing nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis.

(7) Land acquisition and development of property for use in automotive sales and service and related activities by the industrial development authorities of cities with populations of less than 50,000 persons in a county of the eighth class.

(b) (1) Residential real property for family unit or other housing activities.

(2) Sports activities.

(3) Convention or trade show activities.

(4) Airport, dock, wharf, mass commuting, or parking activities, or storage or training activities related to any thereof.

(5) Sewage or solid waste disposal activities or electric energy or gas furnishing activities, except any such activities if the property acquired is suitable for one or more of the activities described in paragraph (2) or (3) of subdivision (a).

(6) Air or water pollution control activities.

(7) Water furnishing activities.

(8) Telephone or community television furnishing activities.

(9) Industrial park land acquisition and development activities, except as defined in paragraph (2) of subdivision (a).

(10) Any activities of persons qualifying as exempt persons under Section 501 of the Internal Revenue Code of 1954, as amended, undertaken by those persons, other than activities constituting an unrelated trade or business as described in Section 513 of that code.

SEC. 8. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 990

An act to amend Sections 41310.5 and 41320 of, to add Sections 14504.2 and 41320.1 to, to repeal and add Section 41321 of, and to repeal Section 41322 of, the Education Code, relating to school districts.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 14504.2 is added to the Education Code, to read:

14504.2. (a) The Controller may perform quality control reviews of audit working papers to determine whether audits are performed in conformity with the audit provisions of the audit guide developed pursuant to Section 14502. The Controller shall communicate the results of his or her reviews to the independent auditor, and to the school district or office of the county superintendent of schools for which the audit was performed, and shall review his or her findings with the independent auditor.

(b) Prior to the performance of any quality control reviews, the Controller shall develop and publish guidelines and standards for those reviews. Pursuant to the development of those guidelines and standards, the Controller shall provide opportunity for public comment.

SEC. 2. Section 41310.5 of the Education Code is amended to read:

41310.5. On or before February 15 of each year, the State Department of Education shall report to the Legislature on the status of school districts which have received emergency apportionments pursuant to Section 41310, Article 2 (commencing

with Section 41320), or other specific statutory apportionment.

SEC. 3. Section 41320 of the Education Code is amended to read:

41320. As a condition to any emergency apportionment to be made pursuant to Section 41310, the following requirements shall be met:

(a) The district requesting the apportionment shall submit to the county superintendent of schools having jurisdiction over the district a report issued by an independent auditor approved by the county superintendent of schools on the financial conditions and budgetary controls of the district, a written management review conducted by a qualified management consultant approved by the county superintendent of schools, and a fiscal plan adopted by the governing board to resolve the financial problems of the district.

(b) The county superintendent of schools shall review, and provide written comment on, the independent auditor's report, the management review, and the district plan. That written comment shall include the county superintendent's approval or disapproval of the district plan. In the event the county superintendent disapproves the plan, the governing board shall revise the district plan to respond to the concerns expressed by the county superintendent.

(c) Upon his or her approval of the district plan, the county superintendent of schools shall submit copies of the report, review, plan, and written comments specified in subdivision (b) to the Superintendent of Public Instruction, the Auditor General, the Joint Legislative Budget Committee, the Director of Finance, and the Controller.

(d) The Superintendent of Public Instruction shall review the reports and comments submitted to him or her by the county superintendent of schools and shall certify to the Director of Finance that the action taken to correct the financial problems of the district is realistic and will result in placing the district on a sound financial basis.

(e) The Legislature shall have specifically appropriated sufficient funds to make the apportionment. The act making that appropriation shall contain a schedule of repayments with which the district shall be required to comply pursuant to this article.

(f) The district requesting the apportionment shall reimburse the county superintendent of schools for the costs incurred by the superintendent pursuant to this section.

SEC. 4. Section 41320.1 is added to the Education Code, to read:

41320.1. Acceptance by the district of the apportionments made pursuant to Section 41320 shall constitute agreement by the district to all of the following conditions:

(a) The Superintendent of Public Instruction shall appoint a trustee who shall have recognized expertise in management and finance, and who shall be bonded. The expenses incurred by the trustee and the costs of the bonding shall be borne by the district. The superintendent shall establish the terms and conditions of the employment, including the remuneration of the trustee. The trustee

shall serve at the pleasure of, and report directly to, the superintendent until the loan called for by this section is repaid.

Notwithstanding any other provision of law, all reports submitted to the trustee shall be public records.

(b) The trustee appointed by the superintendent shall monitor and review the operation of the district. During the period of his or her service, the trustee may stay or rescind any action of the local district governing board that, in the judgment of the trustee, may affect the financial condition of the district. The trustee shall approve or reject all reports and other materials required from the district as a condition of receiving the apportionment. The superintendent, upon the recommendation of the trustee, may reduce any apportionment to the district in an amount up to two hundred dollars ($200) per day for each late or unacceptable report or other material required under Part 24 (commencing with Section 41000) of the Education Code, and shall report to the Legislature any failure of the district to comply with the requirements of this section.

(c) At the request of the Superintendent of Public Instruction, the Controller shall transfer to the State Department of Education, from any apportionment to which the district would otherwise have been entitled pursuant to Section 42238, such amount as is necessary to pay the expenses incurred by the trustee, the costs of the trustee's bonding, and any associated costs incurred by the county superintendent of schools.

(d) For the fiscal year in which the apportionments are disbursed and each year thereafter, the Controller, or his or her designee, shall cause an audit to be conducted of the books and accounts of the district, in lieu of the audit required by Section 41020. At the Controller's discretion, the audit may be conducted by the Controller, his or her designee, or an auditor selected by the district and approved by the Controller. The costs of these audits shall be borne by the district. These audits shall be required until the Controller determines, in consultation with the Superintendent of Public Instruction, that the district is financially solvent, but in no event earlier than one year following the implementation of the plan or later than the time the apportionment made is repaid, including interest.

SEC. 5. Section 41321 of the Education Code is repealed.

SEC. 6. Section 41321 is added to the Education Code, to read:

41321. (a) On or before October 31 of the year following receipt of an emergency apportionment, and each year thereafter, until the emergency apportionment, including interest, is repaid, the governing board of the district shall prepare a report on the financial condition of the district. The report shall include, but not necessarily be limited to, all of the following information:

(1) Specific actions taken to reduce expenditures or increase income, and the cost savings and increased income resulting from those actions.

(2) A copy of the adopted budget for the current fiscal year.

(3) Reserves for economic uncertainties.

(4) Status of employee contracts.

(5) Obstacles to the implementation of the adopted recovery plan.

(b) The district shall submit the report to the trustee for review. Upon the trustee's approval of the report, the district shall transmit copies to the county superintendent of schools, the Superintendent of Public Instruction, and the Controller.

SEC. 7. Section 41322 of the Education Code is repealed.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district is statutorily entitled to reimbursement in the amount sufficient to pay for the program or level of service mandated by this act.

CHAPTER 991

An act to amend Section 11370.4 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 11370.4 of the Health and Safety Code is amended to read:

11370.4. (a) Any person convicted of a violation of Section 11351, 11351.5, or 11352, with respect to a substance containing heroin, cocaine as specified in paragraph (1) of subdivision (f) of Section 11054, or cocaine hydrochloride, shall receive an additional term as follows:

(1) Where the substance exceeds three pounds by weight, the person shall receive an additional term of three years.

(2) Where the substance exceeds 10 pounds by weight, the person shall receive an additional term of five years.

(3) Where the substance exceeds 25 pounds by weight, the person shall receive an additional term of 10 years.

(4) Where the substance exceeds 100 pounds by weight, the person shall receive an additional term of 15 years.

(b) Any person convicted of a violation of Section 11378, 11378.5, 11379, or 11379.5 with respect to a substance containing methamphetamine, amphetamine, phencyclidine (PCP) and its analogs shall receive an additional term as follows:

(1) Where the substance exceeds three pounds by weight, or nine gallons by liquid volume, the person shall receive an additional term of three years.

(2) Where the substance exceeds 10 pounds by weight, or 33⅓

gallons by liquid volume, the person shall receive an additional term of five years.

(3) Where the substance exceeds 25 pounds by weight, or 62½ gallons by liquid volume, the person shall receive an additional term of 10 years.

In computing the quantities involved in this subdivision, plant or vegetable material seized shall not be included.

(c) The additional terms provided in this section shall not be imposed unless the allegation that the weight of the substance containing heroin, cocaine as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine hydrochloride, methamphetamine, amphetamine, or phencyclidine (PCP) and its analogs exceeds the amounts provided in this section is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(d) The additional terms provided in this section shall be in addition to any other punishment provided by law.

(e) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section 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.

SEC. 1.5. Section 11370.4 of the Health and Safety Code is amended to read:

11370.4. (a) Any person convicted of a violation of Section 11351, 11351.5, or 11352, with respect to a substance containing heroin, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, shall receive an additional term as follows:

(1) Where the substance exceeds three pounds by weight, the person shall receive an additional term of three years.

(2) Where the substance exceeds 10 pounds by weight, the person shall receive an additional term of five years.

(3) Where the substance exceeds 25 pounds by weight, the person shall receive an additional term of 10 years.

(4) Where the substance exceeds 100 pounds by weight, the person shall receive an additional term of 15 years.

(b) Any person convicted of a violation of Section 11378, 11378.5, 11379, or 11379.5 with respect to a substance containing methamphetamine, amphetamine, phencyclidine (PCP) and its analogs shall receive an additional term as follows:

(1) Where the substance exceeds three pounds by weight, or nine gallons by liquid volume, the person shall receive an additional term of three years.

(2) Where the substance exceeds 10 pounds by weight, or 33⅓ gallons by liquid volume, the person shall receive an additional term of five years.

(3) Where the substance exceeds 25 pounds by weight, or 62½ gallons by liquid volume, the person shall receive an additional term

of 10 years.

In computing the quantities involved in this subdivision, plant or vegetable material seized shall not be included.

(c) The additional terms provided in this section shall not be imposed unless the allegation that the weight of the substance containing heroin, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, methamphetamine, amphetamine, or phencyclidine (PCP) and its analogs exceeds the amounts provided in this section is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(d) The additional terms provided in this section shall be in addition to any other punishment provided by law.

(e) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section 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.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 11370.4 of the Health and Safety Code proposed by both this bill and SB 943. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1988, (2) each bill amends Section 11370.4 of the Health and Safety Code, and (3) this bill is enacted after SB 943, in which case Section 11370.4 of the Health and Safety Code, as amended by SB 943, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 992

An act to add Section 1797.189 to the Health and Safety Code, relating to emergency medical services personnel.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 1797.189 is added to the Health and Safety Code, to read:

1797.189. (a) As used in this section:

(1) "Chief medical examiner-coroner" means the chief medical examiner or the coroner as referred to in subdivision (m) of Section 24000, Section 24010, subdivisions (k), (m), and (n) of Section 24300, subdivisions (k), (m), and (n) of Section 24304, and Sections 27460 to 27530, inclusive, of the Government Code, and Section 10250.

(2) "Emergency medical technician" means authorized nurse or

mobile intensive care nurse, emergency medical technicians-I, emergency medical technicians-II, emergency medical technician-paramedics, lifeguards, firefighters, and peace officers, as defined or described by Sections 1797.56 1797.80, 1797.82, 1797.84, 1797.182, and 1797.183.

(3) "Reportable disease or condition" or "a disease or condition listed as reportable" means those diseases specified in Subchapter 1 (commencing with Section 2500) of Chapter 4 of Title 17 of the California Administrative Code, as may be amended from time to time.

(4) "Exposed" means at risk for contracting a disease, as defined by regulations of the state department.

(5) "Health facility" means a health facility, as defined in Section 1250, including a publicly operated facility.

(b) Any emergency medical technicians, whether volunteers, partly paid, or fully paid who have provided emergency medical or rescue services and have been exposed to a person afflicted with a disease or condition listed as reportable, which can, as determined by the county health officer, be transmitted through oral contact or secretions of the body, including blood, shall be notified that they have been exposed to the disease and should contact the county health officer if all of the following conditions are met:

(1) The emergency medical technician, who has rendered emergency medical or rescue services and has been exposed to a person afflicted with a reportable disease or condition, provides the chief medical examiner-coroner with his or her name and telephone number at the time the patient is transferred from the emergency medical technician to the chief medical examiner-coroner; or the party transporting the person afflicted with the reportable disease or condition provides that chief medical examiner-coroner with the name and telephone number of the emergency medical technician who provided the emergency medical or rescue services.

(2) The chief medical examiner-coroner reports the name and telephone number of the emergency medical technician to the county health officer upon determining that the person to whom the emergency medical technician provided the emergency medical or rescue services is diagnosed as being afflicted with a reportable disease or condition.

(c) The county health officer shall immediately notify the emergency medical technician who has provided emergency medical or rescue services and has been exposed to a person afflicted with a disease or condition listed as reportable, which can, as determined by the county health officer, be transmitted through oral contact or secretions of the body, including blood, upon receiving the report from a health facility pursuant to paragraph (1) of subdivision (b). The county health officer shall not disclose the name of the patient or other identifying characteristics to the emergency medical technician.

Nothing in this section shall be construed to authorize the further

disclosure of confidential medical information by the chief medical examiner-coroner or any of the emergency medical technicians described in this section except as otherwise authorized by law.

The chief medical examiner-coroner, or the county health officer shall notify the funeral director, charged with removing or receiving the decedent afflicted with a reportable disease or condition from the chief medical examiner-coroner, of the reportable disease prior to the release of the decedent from the chief medical examiner-coroner to the funeral director.

Notwithstanding Section 1798.206, violation of this section is not a misdemeanor.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 993

An act to amend Sections 41, 4004, 4051, 4053, 4056, 6490, 6584, 6620, 7301, 8871, 9371, 14305, 14306, 17136, 23302.5, 23511, 23512, 23512.4, 23512.6, 23512.12, 23513, 23520, 23521.5, 23530.5, 27031.5, 27210; and 27211 of, to repeal Sections 6510, 23512.8, 23514, and 23517 of, and to repeal and add Section 23512.2 of, the Elections Code, relating to elections.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 41 of the Elections Code is amended to read:

41. Notwithstanding any other provision of law, whenever any initiative, referendum, recall, nominating petition or paper, or any other petition or paper, is required to be signed by voters of any county, city, school district, or special district subject to petitioning, only a person who is an eligible registered voter at the time of signing the petition or paper is entitled to sign it. Each signer shall at the time of signing the petition or paper personally affix his or her signature, printed name, and place of residence, giving street and number, and if no street or number exists, then a designation of the place of residence which will enable the location to be readily ascertained. A space at least one inch wide shall be left blank after each name for the use of the clerk in verifying the petition or paper.

The part of a petition for the voters' signatures, printed names, and residence addresses and for the blank spaces for verification purposes shall be substantially in the following form:

		Official Use Only
(Print Name) 1. _____	(Residence Address ONLY)	
(Signature)	(City)	
(Print Name) 2. _____	(Residence Address ONLY)	
(Signature)	(City)	

SEC. 2. Section 4004 of the Elections Code is amended to read:

4004. Within 10 days after the date of publication or posting, or both, of the notice of intention and statement, the proponents shall file a copy of the notice and statement as published or posted, or both, together with an affidavit made by a representative of the newspaper in which the notice was published or, if the notice was posted, by a voter of the city, certifying to the fact of publication or posting.

Such affidavit, together with a copy of the notice of intention and statement, shall be filed with the clerk of the legislative body of the city in his or her office during normal office hours as posted.

SEC. 3. Section 4051 of the Elections Code is amended to read:

4051. If a petition protesting against the adoption of an ordinance and circulated by any qualified registered voter of the city, is submitted to the clerk of the legislative body of the city in his or her office during normal office hours as posted within 30 days of the adoption of the ordinance, and is signed by not less than 10 percent of the voters of the city according to the county clerk's last official report of registration to the Secretary of State, or, in a city with 1,000 or less registered voters, is signed by not less than 25 percent of the voters or 100 voters of the city whichever is the lesser, the effective date of the ordinance shall be suspended, and the legislative body shall reconsider the ordinance.

SEC. 4. Section 4053 of the Elections Code is amended to read:

4053. Petitions shall be accepted for filing by the clerk and the determination of the number of signatures thereon shall be made by the clerk in accordance with the provisions set forth in Section 4008. Petitions shall be filed with the clerk of the legislative body of the city in his or her office during normal office hours as posted.

SEC. 5. Section 4056 of the Elections Code is amended to read:

4056. Signatures upon petitions, and sections thereof, shall be secured, and the petition, together with all sections thereof, shall be filed within 30 days from the date of the adoption of the ordinance to which it relates. Petitions and sections thereof shall be filed with the clerk of the legislative body of the city in his or her office during normal office hours as posted. If such petitions are not filed within the time permitted by this section, the same shall be void for all purposes.

SEC. 6. Section 6490 of the Elections Code is amended to read:

6490. (a) No candidate's name shall be printed on the ballot to be used at the direct primary unless the following nomination documents are delivered for filing to the county clerk:

(1) Declaration of candidacy pursuant to Section 6491.

(2) Nomination papers signed by signers pursuant to Section 6494.

(b) The forms shall first be available on the 113th day prior to the direct primary election and shall be delivered not later than 5 p.m. on the 88th day prior to the direct primary.

(c) Upon the receipt of an executed nomination document, the county clerk shall give the person delivering such document a receipt, properly dated, indicating that the document was delivered to the county clerk.

(d) Notwithstanding Section 6490.5, upon request of a candidate, the county clerk shall provide the candidate with a declaration of candidacy and nomination papers. The county clerk shall not require a candidate to sign, file, or sign and file, a declaration of candidacy as a condition of receiving nomination papers.

SEC. 7. Section 6510 of the Elections Code is repealed.

SEC. 8. Section 6584 of the Elections Code is amended to read:

6584. The certified list of candidates sent to each county clerk by the Secretary of State shall be in substantially the following form:

CERTIFIED LIST OF CANDIDATES FOR NOMINATION

SECRETARY OF STATE

To the County Clerk of _____ County:

I, _____, Secretary of State, do hereby certify that the following list contains the name of each person for whom nomination papers have been filed in my office and who is entitled to be voted for in the above-named county at the direct primary election to be held on the _____ day of _____, 19__, the designation of the office for which each person is a candidate, his or her name being stated under the name of the party he or she represents, except in the case of a

nonpartisan office.

_____ PARTY

STATE (AND DISTRICT) OFFICES

(Title of office)	(Name of candidate)
_____	_____
_____	_____
_____	_____

_____ District

CONGRESSIONAL OFFICES

(Including United States Senator, if any)

_____	_____
_____	_____

_____ District

LEGISLATIVE OFFICES

_____	_____
_____	_____

_____ District
_____ District

_____ PARTY

STATE (AND DISTRICT) OFFICES

I further certify the following list contains the name of each person for whom nomination papers have been filed in my office, together with a designation of the office for which each person is a candidate, and that such person is entitled to be voted for in your county and that election by any registered qualified elector of your county whether registered as intending to affiliate with any political party or not.

NONPARTISAN OFFICES

JUDICIAL OFFICES

(Title of office)	(Name of candidate)
_____	_____
_____	_____
_____	_____

_____ District

SUPERINTENDENT OF PUBLIC INSTRUCTION

_____ _____

_____ _____

Dated at Sacramento, California, this _____ day of _____, 19__.

_____

Secretary of State

SEC. 9. Section 6620 of the Elections Code is amended to read:

6620. The certificate of the Secretary of State showing candidates nominated or selected at a primary election shall be substantially in the following form:

CERTIFICATE OF SECRETARY OF STATE SHOWING CANDIDATES NOMINATED OR SELECTED AT PRIMARY ELECTION

SECRETARY OF STATE

To the County Clerk of _____ County:

I, _____, Secretary of State, do hereby certify that hereinafter are stated the names of those persons entitled to receive votes within your county at the general election who have received partisan nominations or have been selected as candidates for office at the primary election. These nominations and selections are evidenced by the compilation and statement required to be made by me and filed in my office. Set forth along with their respective names there is shown the candidate's designation of his or her office, profession, vocation or occupation, and there is also shown separately and respectively for each nominee the name of the political party or organization, if any, which has nominated him or her and the designation of the public office for which he or she is so nominated.

STATE (AND DISTRICT) OFFICES

(Name of candidate)	(Candidate's designation of office, occupation, etc.)	(Party)	(Office)

_____ District

CONGRESSIONAL OFFICES

_____ _____ _____ _____
_____ _____ _____ _____
_____ _____ _____ _____

_____ District

LEGISLATIVE OFFICES

_____ _____ _____ _____
_____ _____ _____ _____
_____ _____ _____ _____

_____ District

JUDICIAL OFFICES

(Name)	(Candidate's designation of office, occupation, etc.)	(Office)
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____ District

SUPERINTENDENT OF PUBLIC INSTRUCTION

_____ _____ _____
_____ _____ _____
_____ _____ _____

I also certify that at the state conventions which met, according to law, at the State Capitol on the _____ day of _____, 19__, the following persons were nominated as electors of President and Vice President of the United States, for the parties respectively hereinafter placed at the head of the column containing their respective names, and you are hereby directed to print the names of the candidates for President and Vice President for whom those electors have pledged themselves to vote, upon the official ballots to be used at the general election, as representing the candidates of their respective parties for that office.

PRESIDENTIAL ELECTORS

_____ Party	_____ Party
_____ President	_____ President
_____ Vice President	_____ Vice President
1 _____	1 _____
2 _____	2 _____
3 _____	3 _____
etc.	etc.

Dated at Sacramento, California, this _____ day of _____,

19__.
(SEAL)

Secretary of State

SEC. 10. Section 7301 of the Elections Code is amended to read:

7301. The statement and nomination papers shall be available on the 57th day prior to the election for which the candidate is filing as a write-in candidate and shall be delivered to the election official responsible for the conduct of the election, no later than the 14th day prior to the election.

SEC. 11. Section 8871 of the Elections Code is amended to read:

8871. The county clerk, no later than January 31 preceding the direct primary, shall compute the number of members of the committee allotted to each Assembly district or supervisor district, as the case may be, pursuant to this article.

SEC. 11.5. Section 9371 of the Elections Code is amended to read:

9371. The county clerk, no later than January 31 preceding the direct primary, shall compute the number of members of the committee allotted to each Assembly district or supervisor district, as the case may be, pursuant to this article.

SEC. 12. Section 14305 of the Elections Code is amended to read:

14305. The members of the precinct board shall account for the ballots delivered to them by returning a sufficient number of unused ballots to make up, when added to the number of official ballots cast and the number of spoiled and canceled ballots returned, the number of ballots given to them. The officers receiving returned ballots shall compel such an accounting.

The precinct board shall complete the roster as required in Section 14005.5, and shall also complete and sign the certificate of performance prescribed in Section 17013, if that section applies.

SEC. 12.5. Section 14306 of the Elections Code is amended to read:

14306. (a) Immediately upon the arrival of the hour when the polls are required by law to be closed on election day, the clerk conducting the election, shall openly, in the clerk's main office, in the presence of any persons who are present to observe, according to the procedure set forth in either Section 14303 or 14304, proceed to deface every unused ballot remaining in the control of the clerk. The clerk shall forthwith make and file an affidavit, in writing, as to the number of ballots destroyed.

(b) In lieu of the procedure set forth in subdivision (a) for defacing unused ballots, the clerk may recycle the unused ballots according to the provisions of Section 17136.

SEC. 13. Section 17136 of the Elections Code is amended to read:

17136. Notwithstanding any other provision of the law, the clerk, after holding the unused ballots for the purposes of Division 10 (commencing with Section 14000), immediately upon the arrival of the hour when the polls are required by law to be closed on election day, in lieu of the procedure outlined in Section 14306, may recycle

for any other lawful purpose any unused ballots remaining in the control of the clerk which clearly identify the election for which they were prepared. The clerk shall make and file an affidavit, in writing, as to the number of ballots recycled.

SEC. 14. Section 23302.5 of the Elections Code is amended to read:

23302.5. (a) Notwithstanding any other provision of the law, whenever other elections are consolidated with a regularly scheduled election, the period for the filing of nomination documents by candidates in elections consolidated with the regularly scheduled election shall commence on the 113th day prior to the election. The nomination documents shall be filed not later than 5 p.m. on the 88th day prior to the regularly scheduled election in the office of the appropriate officer during regular office hours.

(b) Notwithstanding subdivision (a), if nomination documents for an incumbent officer of a political subdivision are not filed by 5 p.m. on the 88th day before the election, any person other than the person who was the incumbent on the 88th day shall have until 5 p.m. on the 83rd day before the election to file nomination documents for the elective office. This section is not applicable where there is no incumbent eligible to be elected.

SEC. 15. Section 23511 of the Elections Code is amended to read:

23511. (a) At least 90 days, and not more than 120 days, before the day fixed for the general district election the county clerk of the principal county shall publish a notice of the election once in a newspaper of general circulation published in the district or, if no such newspaper is published in the district, in a newspaper having general circulation in the district published in any affected county in the district. The notice shall contain the date of the general district election, name the offices for which candidates may file, and state the qualifications required by the principal act for each office. The notice shall state the location where official declarations of candidacy for eligible candidates desiring to file for any of the elective offices may be obtained. The notice shall state that appointment to each elective office will be made as prescribed by Section 23520 in the event there are no nominees or an insufficient number of nominees for such office and a petition for an election is not filed within the time period prescribed by Section 23520.

(b) In addition to the requirements of subdivision (a), the county clerk shall, by a general press release, set forth all of the following:

(1) The elective offices of the district to be filled at the ensuing district election.

(2) A telephone number which voters of the district may utilize in order to obtain information regarding filing for the elective district office.

SEC. 16. Section 23512 of the Elections Code is amended to read:

23512. Forms for declarations of candidacy for all district offices shall be obtained from the office of the county clerk. The county clerk may, for convenience or necessity, authorize the district

secretary to issue declarations of candidacy. The forms shall first be available on the 113th day prior to the general district election and shall be filed not later than 5 p.m. on the 88th day prior to the general district election in the office of the county clerk during regular office hours or may be filed by certified mail so that the forms reach the clerk's office no later than the deadline for filing in that office. The county clerk shall record the date of filing upon the first page of each declaration of candidacy filed pursuant to this section. No candidate shall withdraw his or her declaration of candidacy after 5 p.m. on the 88th day prior to the general district election.

On request of the district secretary, the county clerk shall provide the secretary with a copy of each declaration of candidacy filed pursuant to this section.

SEC. 17. Section 23512.2 of the Elections Code is repealed.

SEC. 18. Section 23512.2 is added to the Elections Code, to read:

23512.2. The declaration of candidacy shall be in substantially the following form:

"I, _____, do hereby declare myself as a candidate for election to the office of _____. I am a registered voter. If elected I will qualify and serve to the best of my ability. I request my name be placed on the official ballots of the district for the election to be held on the _____ day of _____, 19____.

Residence address _____
Telephone number _____

SEC. 19. Section 23512.4 of the Elections Code is amended to read:

23512.4. The affidavit of the candidate shall be substantially in the following form:

Affidavit of Candidate

State of California } ss.
County of _____ }

_____, under penalty of perjury, says
(Name of candidate)
that he or she is the above-named candidate for the office of_____, that he or she will accept the office
(Office)
in the event of his or her election, that he or she desires his or her name to appear on the ballot as follows:

_____
(Print name above)
that he or she desires the following occupational designation to appear on the ballot under his or her name.

_____
(Print desired designation, if any, above)

_____
(Signature of candidate)

SEC. 20. Section 23512.6 of the Elections Code is amended to read:

23512.6. Each candidate shall set forth in full the oath or affirmation set forth in Section 3 of Article XX of the California Constitution which shall be filed with the Affidavit of Candidate and which shall satisfy the provisions of Section 3 of Article XX of the California Constitution with respect to any district office. The county clerk or district secretary, or a person designated by the county clerk or district secretary, shall administer the oath.

SEC. 21. Section 23512.8 of the Elections Code is repealed.

SEC. 22. Section 23512.12 of the Elections Code is amended to read:

23512.12. Upon filing each declaration of candidacy the county clerk shall examine the declaration to determine if it conforms with the provisions of this part and shall certify whether it is sufficient. For this purpose the clerk shall be entitled to obtain from any officer of an affected county all information necessary to make this determination.

SEC. 23. Section 23513 of the Elections Code is amended to read:

23513. The qualifications of a candidate for elective office, and of an elective officer, of a district shall be determined by the principal act of that district.

SEC. 24. Section 23514 of the Elections Code is repealed.

SEC. 25. Section 23517 of the Elections Code is repealed.

SEC. 26. Section 23520 of the Elections Code is amended to read:

23520. If, by 5 p.m. on the 83rd day prior to the day fixed for the general district election (a) only one person has filed a declaration of candidacy for any elective office to be filled at that election or (b) no one has filed a declaration of candidacy for such an office or (c) in the case of directors to be elected from the district at large, the number of persons who have filed a declaration of candidacy for director at large does not exceed the number of offices of director at large to be filled at that election or (d) in the case of directors who must reside in a division but be elected at large, the number of candidates for director at large from a division does not exceed the number required to be elected director at large while residing in that division; and, if a petition signed by 10 percent of the voters or 50 voters, whichever is the smaller number, in the district or division if elected by division, requesting that the general district election be held has not been presented to the officer conducting the election, he or she shall submit a certificate of these facts to the supervising authority and request that the supervising authority, at a regular or special meeting held prior to the last Monday before the last Friday in November in which the election is held, appoint to such office or offices the person or persons, if any, who have filed declarations of

candidacy. The supervising authority shall make such appointments. If no person has filed a declaration of candidacy for any office, the supervising authority shall appoint any person to the office who is qualified on the date when the election would have been held. The person appointed shall qualify and take office and serve exactly as if elected at a general district election for such office.

Where a director must be appointed to represent a division, all or most of which is not within the county governed by the supervising authority, then the board of supervisors of the county within which all or most of that division is located shall be the body to which request for appointment is made and which shall make such appointment.

SEC. 27. Section 23521.5 of the Elections Code is amended to read:

23521.5. Notwithstanding any other provision of law, in any district or agency election, if a declaration of candidacy for an incumbent elective officer of a district are not filed by 5 p.m. on the 88th day before the general district election, any person other than the person who was the incumbent on the 88th day shall have until 5 p.m. on the 83rd day before the election to file a declaration of candidacy for the elective office.

This section is not applicable where there is no incumbent to be elected.

SEC. 28. Section 23530.5 of the Elections Code is amended to read:

23530.5. Whenever a candidate has filed a declaration of candidacy, and the candidate's declaration of candidacy has been certified as sufficient pursuant to Section 23512.12, the name of the candidate shall be printed upon the ballot unless the candidate has died and that fact has been ascertained by the officer charged with the duty of printing the ballots, at least 60 days before the day of the election.

SEC. 29. Section 27031.5 of the Elections Code is amended to read:

27031.5. Within 10 days after filing of the answer to the notice of intention, or, if no answer is filed, within 10 days after the expiration of the seven-day period specified in Section 27023, the proponents shall file two blank copies of the petition with the clerk in his or her office during normal office hours as posted or, in the case of a recall of a state officer, with the Secretary of State in his or her office during normal office hours as posted, who shall ascertain if the proposed form and wording of the petition meets the requirements of this chapter. At the time of filing the two blank copies of the petition, the proponents shall also file proof of publication of the notice of intention, if the notice of intention was published, or an affidavit of posting of the notice of intention, if the notice of intention was posted. The clerk or, in the case of a recall of a state officer, the Secretary of State, shall, within 10 days of receiving the blank copies of the petition, notify the proponents in writing of his or her finding.

If the clerk finds that the requirements of this chapter are not met, the clerk shall include in his or her findings a statement as to what alterations in the petition are necessary. The proponents shall, within 10 days after receiving the notification, file two blank copies of the corrected petition with the clerk in his or her office during normal office hours as posted. The 10-day correction notification period and the 10-day filing period for corrected petitions shall be repeated until the clerk or the Secretary of State finds no alterations are required.

No signature may be affixed to a recall petition until the clerk or, in the case of the recall of a state officer, the Secretary of State, has notified the proponents that the form and wording of the proposed petition meet the requirements of this chapter.

SEC. 30. Section 27210 of the Elections Code is amended to read:

27210. A recall petition shall be submitted to the clerk for filing in his or her office during normal office hours as posted within the following number of days after the clerk or, in the case of a recall of a state officer, the Secretary of State, notifies the proponents that the form and wording of the petition meets the requirements of Article 3 (commencing with Section 27030) of Chapter 1 of this division:

(a) Forty days if the electoral jurisdiction has less than 1,000 registered voters.

(b) Sixty days if the electoral jurisdiction has less than 5,000 registered voters but at least 1,000.

(c) Ninety days if the electoral jurisdiction has less than 10,000 registered voters but at least 5,000.

(d) One hundred twenty days if the electoral jurisdiction has less than 50,000 registered voters but at least 10,000.

(e) One hundred sixty days if the electoral jurisdiction has 50,000 registered voters or more.

The number of registered voters shall be that which was reported at the last report of registration by the county clerk to the Secretary of State pursuant to Section 610 or 6460 and prior to a finding of the clerk or Secretary of State that no alterations are required in the form of the recall petition pursuant to Section 27031.5.

SEC. 31. Section 27211 of the Elections Code is amended to read:

27211. The number of qualified signatures required in order to qualify a recall for the ballot shall be as follows:

(a) In the case of an officer of a city, county, school district, community college district, county board of education, or resident voting district, the number of signatures shall be equal in number to not less than the following percent of the registered voters in the electoral jurisdiction:

(1) Thirty percent if the registration is less than 1,000.

(2) Twenty-five percent if the registration is less than 10,000 but at least 1,000.

(3) Twenty percent if the registration is less than 50,000 but at least 10,000.

(4) Fifteen percent if the registration is less than 100,000 but at least 50,000.

(5) Ten percent if the registration is 100,000 or above.

The number of registered voters shall be calculated as of the time of the last report of registration by the county clerk to the Secretary of State, and prior to the finding by the clerk or Secretary of State that no alterations are required in the form of the recall petition pursuant to Section 27031.5.

(b) In the case of a state officer, including judges of courts of appeal and trial courts, the number of signatures shall be as provided for in subdivision (b) of Section 14 of Article II of the California Constitution. In the case of a judge of a superior, municipal, or justice court, which office has never appeared on the ballot since its creation, or did not appear on the ballot at its last election pursuant to Section 25304, the number of signatures shall be as provided in subdivision (b) of Section 14 of Article II of the California Constitution except that the percent shall be based on the number of votes cast within the judicial jurisdiction for the countywide office which had the least number of votes in the most recent general election in the county in which the judge holds his or her office.

(c) In the case of a landowner voting district, signatures of voters owning at least 10 percent of the assessed value of land within the electoral jurisdiction of the officer sought to be recalled.

CHAPTER 994

An act to amend Sections 11965, 11965.5, 11965.7, 11966, 11966.5, 11967, 11967.5, and 11969.5 of, and to add Section 11965.4 to, the Health and Safety Code, relating to drug abuse prevention.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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 the county level, 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 11965.4 is added to the Health and Safety Code, to read:

11965.4. School-community primary prevention programs shall be funded with 90 percent state and 10 percent school district funds.

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, refusal skills, 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, positive role model programs, programs involving youth and adults in constructive activities designed as alternatives to drug use, and programs for special target groups, including, but not limited to, 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 administrator 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 and develop the school and community program plan and applications for funds. The joint application of school-community primary drug abuse prevention plan prepared by the county administrator 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 school-community primary drug abuse prevention plan shall be submitted to the state as a separate and distinct part of a county drug plan. Applications for funding shall be reviewed by an external review selection committee. This committee shall be composed of no less than six members, appointed by the State Department of Alcohol and Drug Programs. The committee shall review applications and make recommendations for grant awards.

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 each local school-community primary drug abuse prevention plan submitted to 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) Incorporation of comments on program plans provided by the local primary prevention advisory committee. This committee may be the existing drug abuse advisory board 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.

(c) Certification by the county drug program administrator and the county office of education of each others plans, emphasizing public notice and nonduplication of programming, especially with respect to nonduplication of the drug program application and of any services provided pursuant to Section 51260 of the Education Code.

(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 county plans, and assurance of maintenance of current efforts in order to preclude the

use of funds to support existing programs.

(f) 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 application.

(g) Evidence that any program funded for two years or more under this article has substantially achieved its measurable goals and objectives as specified in the approved application and school-community primary drug abuse prevention plan. The county agencies allocating funds to individual applicants or programs pursuant to the county application and school-community primary drug abuse prevention plan shall have responsibility to institute monitoring systems to insure compliance with this requirement.

(h) 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.

(i) Evidence of the intent and capability of the county to provide for the needs of ethnic minorities and other underserved groups.

SEC. 6. Section 11966.5 of the Health and Safety Code is amended to read:

11966.5. The school-community primary drug abuse prevention plan from each county shall be submitted, with appropriate documentation as provided in Section 11966, as part of the county drug plan.

SEC. 7. Section 11967 of the Health and Safety Code is amended to read:

11967. Upon receiving a letter from the State Department of Alcohol and Drug Programs specifying the eligible county allocation, both the county drug program administrator 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 the information to the public media, to school districts within the county, and to community nonprofit organizations providing preventive services to youth. The public notice shall specify the nature and content 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) The total funds available shall be administered by the State Department of Alcohol and Drug Programs.

(b) No more than 7.5 percent of the total amount 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 department to develop

school-community primary drug abuse prevention plan guidelines that are consistent with the legislative intent prescribed in Section 11965.7.

SEC. 9. Section 11969.5 of the Health and Safety Code is amended to read:

11969.5. Counties shall submit periodic performance and management reports prescribed by the State Department of Alcohol and Drug Programs to assure that local management of these programs are in compliance with the provision of this article. The State Department of Alcohol and Drug Programs shall establish mutually cooperative arrangements for sharing reports on the implementation of this article with the State Department of Education.

SEC. 10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 995

An act to amend Sections 221, 27510, and 27541 of, to add Section 27510.1 to, to repeal and add Section 27551 of, and to add and repeal Article 5 (commencing with Section 6981) of Chapter 2 of Part 3 of Division 4, of the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 221 of the Food and Agricultural Code is amended to read:

221. The "Department of Food and Agriculture Fund," which is a special fund, is continued in existence. Any money which is directed by law to be paid into the fund shall be paid into it and, unless otherwise specifically provided, shall be expended solely for the enforcement of the law under which the money was derived. The expenditure from the fund for the enforcement of any law shall not, unless otherwise specifically provided, exceed the amount of money which is credited to the fund pursuant to the law.

Notwithstanding Section 13340 of the Government Code, all money deposited in the fund under the provisions enumerated

below is hereby continuously appropriated to the department without regard to fiscal years for expenditure in carrying out the purposes for which the money was deposited and for making the refunds authorized by Section 302.

All money deposited in the fund under the provisions enumerated below is hereby exempted from Sections 13320 to 13324, inclusive, of the Government Code.

(a) Article 7 (commencing with Section 5821) of Chapter 8 of Part 1 of Division 4, Chapter 1 (commencing with Section 6701) of Part 3 of Division 4, and Chapter 5 (commencing with Section 53301) of Division 18.

(b) Article 5 (commencing with Section 6001) of Chapter 9 of Part 1 of Division 4.

(c) Article 4 (commencing with Section 6981) of Chapter 2 of Part 3 of Division 4.

(d) Chapter 4 (commencing with Section 14200), Chapter 5 (commencing with Section 14501), and Chapter 6 (commencing with Section 14901) of Division 7.

(e) Part 1 (commencing with Section 16301) and Part 2 (commencing with Section 17401) of Division 9.

(f) Division 10 (commencing with Section 20001).

(g) Division 11 (commencing with Section 23001).

(h) Part 4 (commencing with Section 27501) of Division 12.

(i) Division 16 (commencing with Section 40501).

(j) Chapter 9 (commencing with Section 44971) of Division 17.

(k) Chapter 1 (commencing with Section 52001) of Division 18.

(*l*) Chapter 2 (commencing with Section 52251) of Division 18.

(m) Chapter 3 (commencing with Section 52651) of Division 18.

(n) Chapter 4 (commencing with Section 52851) of Division 18.

(o) Chapter 6 (commencing with Section 55401), Chapter 7 (commencing with Section 56101), and Chapter 7.5 (commencing with Section 56701) of Division 20.

(p) Section 58582.

(q) Chapter 1 (commencing with Section 61301), Chapter 2 (commencing with Section 61801), and Chapter 3 (commencing with Section 62700) of Part 3 of Division 21.

(r) Chapter 5.5 (commencing with Section 12531) of Division 5 of the Business and Professions Code.

(s) Chapter 7 (commencing with Section 12700), Chapter 7.3 (commencing with Section 12740), and Chapter 7.7 (commencing with Section 12770) of Division 5 of the Business and Professions Code.

(t) Chapter 14 (commencing with Section 13400), Chapter 15 (commencing with Section 13700), Chapter 16 (commencing with Section 13800), and Chapter 17 (commencing with Section 13900) of Division 5 of the Business and Professions Code.

SEC. 2. Article 5 (commencing with Section 6981) is added to Chapter 2 of Part 3 of Division 4 of the Food and Agricultural Code, to read:

Article 5. Special Assessments

6981. (a) An annual assessment of one-quarter of 1 percent shall be levied on the gross sales of all pome and stone fruit trees, nut trees, and grapevines, including seedlings and root-stocks, except ornamental varieties, produced and sold within the state or produced within and shipped from the state by any licensed nursery dealer during that dealer's applicable license period.

(b) The director may set the assessment at a lower percent to cover the costs necessary to implement and carry out all department programs established pursuant to Article 7 (commencing with Section 5821) of Chapter 8 of Part 1 concerning the registration and certification of pome and stone fruit trees, nut trees, and grapevines; the University of California foundation plant materials service activities concerning pome and stone fruit trees, nut trees, and grapevines; and other activities related to the development of planting materials for pome and stone fruit trees, nut trees, and grapevines.

6982. The assessment shall be due and payable to the director at the time the nursery dealer applies for renewal of a license pursuant to Article 2 (commencing with Section 6721) of Chapter 1.

6983. (a) The measure of gross sales shall be the gross sales for the previous fiscal year of each licensee.

(b) The director may conduct audits and ensure that an assessment is being properly paid.

6984. Any money which is received by the department pursuant to this article shall be paid into the State Treasury and shall be credited to the Department of Food and Agriculture Fund. Any money in the fund which is derived pursuant to this article shall be expended solely to support programs specified in subdivision (b) of Section 6981.

6985. The department may enter into agreements with the University of California, any commissioner, and any qualified research agency to assist in development of planting material for pome and stone fruit, nut tree, and grapevine production. The agreements shall provide for payment for services rendered from fees collected pursuant to this article.

6986. The director shall levy on all delinquent and unpaid assessments pursuant to this article a collection charge of 20 percent of the amount due for each license period that the assessment is delinquent.

6987. The director shall not issue a nursery license to any applicant who has failed to pay an assessment due pursuant to this article.

6988. The director shall, upon consultation with the pome and stone fruit tree, nut tree, and grapevine nursery industry, appoint a committee to assist and advise him or her concerning the implementation of this article.

(a) Membership on the committee shall consist of 11

representatives, a majority of whom are licensed producers of pome, stone, nut, and grape nurserystock, but also users and a public member as follows:

(1) Two each from the stone fruit (including almonds), pome fruit, and nut (other than almond) industries.

(2) Four from the grape industry.

(3) One public representative.

(b) Committee members shall represent all areas of the state involved in the production of pome and stone fruit trees, nut trees, and grapevines.

(c) The committee shall meet at least twice a year. The chairman or the director may call any other meeting when it is deemed necessary by one or both of them. Each member shall be allowed per diem and mileage in accordance with the Board of Control rules for attending any meeting of the committee.

(d) The committee shall review and make recommendations to the director concerning the ongoing operations of the department and the University of California pertaining to this article. This shall include advice on fiscal expenditure, assessments needed to cover costs, and proposals concerning the development of planting materials.

6989. This article shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 3. Section 27510 of the Food and Agricultural Code is amended to read:

27510. "Egg handler" means a person engaged in the business of producing, candling, grading, packing, or otherwise preparing shell eggs for market or who engages in the operation of selling or marketing eggs that he or she has produced, purchased, or acquired from a producer, or which he or she is marketing on behalf of a producer, whether as owner, agent, employee, or otherwise. This section shall not apply to any purchaser who is a retailer and who does not handle eggs in any other capacity, except as a retailer.

SEC. 4. Section 27510.1 is added to the Food and Agricultural Code, to read:

27510.1. "Producer" means a person engaged in the business of producing eggs from domesticated fowl for human consumption, who is not in the business of candling, grading, packing, sorting, or otherwise preparing shell eggs for market, marketing, or processing eggs into egg products.

SEC. 5. Section 27541 of the Food and Agricultural Code is amended to read:

27541. Any person engaged in business in this state as an egg producer or egg handler shall register with the director. A new registration shall be submitted if any current information changes.

SEC. 6. Section 27551 of the Food and Agricultural Code is repealed.

SEC. 7. Section 27551 is added to the Food and Agricultural Code,

to read:

27551. The following persons shall pay to the director a maximum fee of one mill ($0.001) for each dozen of eggs sold or purchased as provided below:

(a) Egg handlers shall pay the fee on all egg sales from their own production, on eggs purchased or acquired from egg producers, and on eggs processed into egg products.

(b) The egg producer shall pay the fee on all egg sales to anyone not registered as a California egg handler, to out-of-state purchasers, and to egg breaking plants.

(c) The initial purchaser of eggs from out-of-state, even if a retailer, producer, handler, or breaking plant, shall report and pay the fee.

(d) Shipments of eggs which are accompanied by a United States Department of Agriculture certificate of grade and sold to the federal government or its agencies are exempt from these fees.

(e) Eggs sold to household consumers on the premises where produced from a total flock size of 500 hens or less are exempt from these fees.

(f) The assessment provided for in this section shall only be paid once on any particular egg.

CHAPTER 996

An act to amend Sections 14041 and 14104.3 of, and to add and repeal Section 14104.4 of, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 14041 of the Welfare and Institutions Code is amended to read:

14041. (a) The director shall develop and implement standards for the timely processing and payment of each claim type. The standards shall be sufficient to meet minimal federal requirements for the timely processing of claims.

(b) It is the intent of the Legislature that claim forms for use by physicians and hospitals be the same as claim forms in general use by other payors, including Medicare, to the extent compatible with the following:

(1) Requirements for maximum federal matching funds.

(2) The reasonable needs of the mechanized claims processing system.

(3) Maximum billing efficiency.

(4) The convenience of providers.

SEC. 2. Section 14104.3 of the Welfare and Institutions Code is amended to read:

14104.3. (a) The department may, to the extent feasible, enter into nonexclusive contracts providing arrangements under which funds available for health care under this chapter shall be administered and disbursed to providers of health care or to their designated agents in consideration for services rendered and supplies furnished by them in accordance with the provisions of the applicable contract and any schedule of charges or formula for determining payments established pursuant to the contract. The contract shall provide that the contractor:

(1) Will take any action as may be necessary to assure that payment for services to hospitals and other facilities and professional services shall be based on standards determined by the director. The formula for the payments shall be determined in accordance with regulations establishing the methods to be used and the items to be included.

(2) Will take any action which may be necessary to assure that charges by providers will be reasonable and not higher than the charge for a comparable service and under comparable circumstances made to other payors.

(3) Bills for service under this chapter shall be reviewed and rejected or processed for payment within an average of 18 days from receipt of evidence establishing validity of the bill for payment in the office of the contractor. Ninety percent of all bills submitted to the contractor and under the contractor's control, as set forth in the request for proposal, shall be processed and paid in 30 days and 99 percent of all claims submitted to the contractor and under the contractor's control, as set forth in the request for proposal, shall be processed and paid in 90 days. If it is determined by the contractor that additional evidence of validity is required, the evidence shall be requested within 18 days from the date the bill is received by the contractor. In any event, notice shall be given within 30 days from the date the bill is received concerning the status of the bill submitted if the bill is held for peer review by the contractor beyond 18 days. In no event, shall the number of bills not processed for payment within 30 days of receipt exceed 9 percent of the total bills inventory.

(b) Contracts awarded under this section shall be awarded on a bid basis, and before entering into any contract, the director shall publish notice soliciting bids.

(c) Contracts awarded under this section may provide all of the following:

(1) Payments to the contractor may be on a capitation or prepayment basis, or on a combination of both methods of payment.

(2) Providers may assume all or part of the risk of utilization of services, or costs of services, or both, and that providers who agree to assume that risk may be separately classified for purposes of applicable rates of payment or administrative requirements.

(3) Any other provisions which have previously been incorporated into pilot programs established pursuant to Chapter 8 (commencing with Section 14200) and determined by the director to be desirable and feasible.

(d) The director shall report to the Joint Legislative Budget Committee, within a year from the date of awarding contracts, on actions taken by him or her in the awarding of contracts under this section, including, but not limited to, the number and types of bids submitted, the basis on which contracts were awarded, and, if a contract is awarded to other than the lowest bidder, the reason for that action.

SEC. 3. Section 14104.4 is added to the Welfare and Institutions Code, to read:

14104.4. (a) The Legislative Analyst shall include in the Analysis of the 1989–90 Budget Bill a review of the degree to which the Medi-Cal fiscal intermediary has complied with the requirements of the request for proposal.

(b) The director shall report to the Chairperson of the Joint Legislative Budget Committee and the chairperson of the fiscal committee of each house of the Legislature on April 1, 1988, October 1, 1988, January 1, 1989, and October 1, 1989, on the fiscal intermediary's general contract compliance, including compliance with the requirements to implement enhancements, as required by the request for proposal.

(c) Thirty days after receipt of the report from the director, the Joint Legislative Budget Committee may hold hearings relating to the contents of the reports.

(d) This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1990, deletes or extends that date.

CHAPTER 997

An act to amend Section 14006.2 of, and to add Sections 14006.3, 14006.4, and 14006.5 to, the Welfare and Institutions Code, relating to health.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. It is the intent of the Legislature that this act require health facility providers to pass on to residents and applicants information regarding Medi-Cal eligibility provided by the State Department of Health Services and not to require those providers to provide advice on eligibility for Medi-Cal benefits.

SEC. 2. Section 14006.2 of the Welfare and Institutions Code is

amended to read:

14006.2. (a) In determining the eligibility of a married individual, pursuant to Section 14005.4 or 14005.7, who, in accordance with Title XIX of the federal Social Security Act and regulations adopted pursuant thereto, is considered to be living separately from his or her spouse, the individual shall be considered to have made a transfer of resources for full and adequate consideration under Section 14006 or 14015 by reason of either of the following:

(1) Having entered into a written agreement with his or her spouse dividing their community property into equal shares of separate property. Property so agreed to be separate property shall be considered by the department to be the separate property of the spouse who, pursuant to the agreement, is the owner of the property. Only in cases in which separate property owned by one spouse is actually made available to the other spouse, may the department count the separate property in the eligibility determination of the nonowner spouse.

(2) Having transferred to his or her spouse all of his or her interest in a home, whether the transfer was made before or after the individual became a resident in a skilled nursing facility or an intermediate care facility in accordance with and to the extent permitted by Title XIX of the federal Social Security Act and regulations promulgated pursuant thereto.

(b) The department shall furnish to all Medi-Cal applicants a clear and simple statement in writing advising them that (1) in the case of an individual who is an inpatient in a skilled nursing facility, intermediate care facility or other medical institution, if the individual or the individual's conservator transferred to the individual's spouse all of the interest in a home, the individual shall not be considered ineligible for Medi-Cal by reason of the transfer; and that (2) if the individual and the individual's spouse execute a written interspousal agreement which divides and transmutes community property into equal shares of separate property, the separate property of the individual's spouse shall not be considered available to the individual and need not be spent by the spouse for the individual's care in a skilled nursing facility, intermediate care facility or other medical institution.

(c) In order to qualify for Medi-Cal benefits pursuant to Section 14005.4 or 14005.7, a married individual who resides in a skilled nursing facility or intermediate care facility, and who is in a Medi-Cal budget unit separate from that of his or her spouse, shall be required to expend his or her other resources for his or her own benefit, so that the amount which remains does not exceed the limit established pursuant to subdivision (c) of Section 14006. For purposes of this section, the term "his or her other resources" shall be limited to the following:

(1) All of his or her separate property that would not have been exempt under applicable Medi-Cal laws and regulations at the time when he or she entered a skilled nursing or intermediate care

facility, or at the date of execution of the agreement referred to in this section, whichever is earlier. For purposes of this paragraph, the mere change of residence from one facility to another shall not be deemed to be a new entry.

(2) One-half of all the community property, or the proceeds from the sale or exchange of that property, that would not have been exempt at the time described in paragraph (1).

(d) For purposes of subdivision (c), in the absence of an agreement such as that referred to in subdivision (a), there shall be a presumption, rebuttable by either spouse, that all property owned by either spouse was community property.

(e) The statement furnished pursuant to subdivision (b) shall advise all persons entering a long-term care facility, and all Medi-Cal applicants that only their half of the community property shall be taken into account in determining their eligibility for Medi-Cal, whether or not they execute the written interspousal agreement referred to in the statement.

SEC. 3. Section 14006.3 is added to the Welfare and Institutions Code, to read:

14006.3. Any skilled nursing facility or intermediate care facility shall, prior to admitting any person, provide a clear and simple statement, in writing, in a form and language specified by the department, to that person and that person's spouse and responsible relative which explains how Medi-Cal eligibility requirements affect their separate and community property.

SEC. 4. Section 14006.4 is added to the Welfare and Institutions Code, to read:

14006.4. (a) The statement required by Sections 14006.2 and 14006.3 shall be in the following form:

"NOTICE REGARDING SEPARATE AND COMMUNITY PROPERTY AND ELIGIBILITY FOR MEDI-CAL

"If you or your spouse is in or is entering Long-Term Care, read this important message!

You both do not have to use all your resources, such as savings, before Medi-Cal might help pay for all or some of the long-term care costs.

You should be aware of the following to take advantage of this provision of the law:

If you and your spouse have a written property agreement (Interspousal Agreement) dividing your community property into equal shares, only the spouse in long-term care has to spend his or her resources down to the Medi-Cal property limit before Medi-Cal might help pay for nursing home costs. The at-home spouse's share of the resources does not have to be used.

Even if you do not have a written agreement, the county welfare department will automatically divide your community property for Medi-Cal purposes at the time the long-term care spouse applies for

Medi-Cal. This automatic division is computed as of the date the spouse entered long-term care.

A spouse in long-term care may transfer all his or her interest in the home to the at-home spouse without affecting Medi-Cal eligibility.

The Medi-Cal program assumes that all of a married couple's income is community income, so it can be divided into equal shares when one spouse is in long term care. However, if the spouse at home receives more than half of the couple's community property income in his or her own name, the spouse at home may keep the larger share.

This is only a brief description of the Medi-Cal eligibility rules, for more detailed information, you should call your county welfare department. You will probably want to consult with the local branch of the state long-term care ombudsman, an attorney, or a legal services program for seniors in your area.

I have read the above notice and have received a copy.

Dated: _____ Signature: _____ "

(b) The statement required by subdivision (a) shall be printed in at least 10-point type, shall be clearly separate from any other document or writing, and shall be signed by the person to be admitted and that person's spouse, and any responsible relative.

(c) Any skilled nursing facility or intermediate care facility that willfully fails to comply with this section shall be subject to a class "B" citation, as defined by Section 1424 of the Health and Safety Code.

(d) The department may revise this statement as necessary to maintain its consistency with state and federal law.

SEC. 5. Section 14006.5 is added to the Welfare and Institutions Code, to read:

14006.5. The department shall include training regarding the treatment of separate and community income and resources in determining eligibility for Medi-Cal benefits, as part of the ongoing training offered to county welfare departments.

SEC. 6. All skilled nursing facilities and intermediate care facilities shall provide to all of their residents the statement required by Section 14006.3 of the Welfare and Institutions Code, as added by Section 4 of this act, immediately upon receipt of notice from the State Department of Health Services. Subdivision (c) of Section 14006.4 shall also apply to this section.

CHAPTER 998

An act to amend Section 67300 of the Education Code, as amended by Section 34 of, and to repeal Section 67300 of the Education Code, as amended by Section 35 of, Chapter 248 of the Statutes of 1986, relating to education.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 67300 of the Education Code, as amended by Section 34 of Chapter 248 of the Statutes of 1986, is amended to read:

67300. Services for disabled students provided by the California community colleges and the California State University shall, and services provided for the University of California may, at a minimum, conform to the level and quality of those services provided by the Department of Rehabilitation to its clients prior to July 1, 1981. However, nothing in this chapter requires the California community colleges, the California State University, or the University of California to provide the services for disabled students in the same manner as those services were provided by the Department of Rehabilitation.

The Board of Governors of the California Community Colleges and the Trustees of the California State University shall, for their respective systems, and the Regents of the University of California may, by January 15, 1982, adopt regulations to implement this chapter.

Notwithstanding any other provision of this section or Section 67301, blind students who are attending California community colleges under the sponsorship of the Department of Rehabilitation shall have all reader services provided directly by the Department of Rehabilitation. Reader services provided by the Department of Rehabilitation pursuant to this section shall be furnished in accordance with federal and state law. The Department of Rehabilitation shall seek federal funds for the provision of readers to blind students pursuant to this section.

SEC. 2. Section 67300 of the Education Code, as amended by Section 35 of Chapter 248 of the Statutes of 1986, is repealed.

CHAPTER 999

An act to add Section 310.2 to the Penal Code, relating to crimes.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 310.2 is added to the Penal Code, to read:

310.2. (a) Any coach, trainer, or other person acting in an official or nonofficial capacity as an adult supervisor for an athletic team consisting of minors under the age of 18 who sells, gives, or otherwise furnishes to any member of that team a diuretic, diet pill, or laxative with the intent that it be consumed, injected, or administered for any nonmedical purpose such as loss of weight or altering the body in any way related to participation on the team or league, is guilty of a misdemeanor.

(b) Subdivision (a) does not apply to a minor's parent or guardian, or any person acting at the written direction of, or with the written consent of, the parent or guardian, if that person is in fact acting with that authority. Subdivision (a) does not apply to a physician.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 1000

An act relating to water systems, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. A grant is hereby authorized from the California Safe Drinking Water Fund pursuant to subdivision (d) of Section 13895.9 of the Water Code to the Descanso Community Water District for the purpose of improving its domestic water supply system to meet, at a minimum, safe drinking water standards.

SEC. 2. The Department of Water Resources shall determine eligibility for and the amount of the grant authorized in Section 1, in accordance with the California Safe Drinking Water Bond Law of

1986 (Chapter 10.7 (commencing with Section 13895) of Division 7 of the Water Code), or subsequent acts, and may make the grant in accordance with the bond law.

SEC. 3. The Legislature hereby finds and declares that, in order to meet the minimum safe drinking water standards, there are critical needs within the entity identified in Section 1 to immediately undertake certain improvements necessary to enable residents of that community to have a dependable and potable water supply.

SEC. 4. The Legislature further finds and declares that the water system of the entity identified in Section 1 has 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 the community and that this entity is only barely meeting the demand for water within the community.

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 the Descanso Community Water District to undertake urgently needed repair to its community water system at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1001

An act to amend Sections 20180.1 and 21150 of, and to add Section 21102.5 to, the Government Code, relating to the Public Employees' Retirement System, and making an appropriation therefor.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 20180.1 of the Government Code is amended to read:

20180.1. Notwithstanding any other provision of this part or of Section 13943.2 or 16302.1 to the contrary, the system may dispense with any recalculation of, or other adjustment to, benefit payments, and shall not effect a collection or return of accumulated contributions when there has been a payment of retirement or death benefits or a return of accumulated contributions, and either (a) there is a plus or minus balance of fifty dollars ($50) or less remaining posted to a member's individual account, or (b) such balance exceeds fifty dollars ($50) but the difference to the monthly allowance unmodified by any optional settlement is less than one dollar ($1).

SEC. 2. Section 21102.5 is added to the Government Code, to

read:

21102.5. A person employed in violation of Section 21150 shall be reinstated to membership in the category in which, and on the date on which, the unlawful employment occurred.

SEC. 3. Section 21150 of the Government Code is amended to read:

21150. (a) A person who has been retired under this system, for service or for disability, shall not be employed in any capacity thereafter by the state, the university, a school employer, or by a contracting agency, unless the employment qualifies for service credit in the University of California Retirement System or the State Teachers' Retirement System, unless he or she has first been reinstated from retirement pursuant to this chapter, or unless the employment, without reinstatement, is authorized by this article. A retired person whose employment without reinstatement is authorized by this article shall acquire no service credit or retirement rights under this part with respect to the employment.

(b) Any retired member employed in violation of this article shall:

(1) Reimburse the retirement system for any retirement allowance received during the period or periods of employment which are in violation of law.

(2) Pay to the retirement system an amount of money equal to the employee contributions which would otherwise have been paid during the period or periods of unlawful employment, plus interest thereon.

(3) Contribute toward reimbursement of the retirement system for administrative expenses incurred in responding to this situation, to the extent the member is determined by the executive officer to be at fault.

(c) Any public employer which employs a retired member in violation of this article shall:

(1) Pay to the retirement system an amount of money equal to employer contributions which would otherwise have been paid for the period or periods of time that the member is employed in violation of this article, plus interest thereon.

(2) Contribute toward reimbursement of the retirement system for administrative expenses incurred in responding to this situation, to the extent the employer is determined by the executive officer to be at fault.

SEC. 4. There is hereby appropriated from the Public Employees' Retirement Fund the amount of ten thousand dollars ($10,000) to the Public Employees' Retirement System for the purpose of informing annuitants and employers regarding the provisions of Sections 2 and 3 of this act.

CHAPTER 1002

An act to amend Sections 53077, 54997, and 54998 of the Government Code, relating to fees.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 53077 of the Government Code is amended to read:

53077. (a) If a local agency requires the payment of a fee specified in paragraph (2) of subdivision (b) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected, except that the requirements of this sentence shall not apply to interest on the fees paid pursuant to Section 66477 until January 1, 1985.

(b) For purposes of this section:

(1) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(2) "Fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee within the meaning of subdivision (b) of Section 66000, as added by Assembly Bill 1600 of the 1987–88 Regular Session, if enacted, and that is imposed by the local agency as a condition of approving the development project.

(3) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district.

(c) Any person may request an audit of any local agency fee or charge that is subject to Section 54997, including fees or charges of school districts, in accordance with that section.

(d) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities.

SEC. 2. Section 54997 of the Government Code is amended to

read:

54997. (a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable.

(b) Any costs incurred by a local agency in having an audit conducted by an independent auditor pursuant to subdivision (a) may be recovered from the person who requests the audit.

(c) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(d) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.

(e) "Local agency," as used in this chapter, means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district.

(f) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

SEC. 3. Section 54998 of the Government Code is amended to read:

54998. This chapter shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1003

An act to add and repeal Sections 447 and 1021.1 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 447 is added to the Code of Civil Procedure, to read:

447. (a) The signature of an attorney or party constitutes a certificate by him or her that he or she has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee. Sanctions may be imposed only after notice and opportunity to be heard. An order imposing sanctions shall be in writing, and shall recite in detail the circumstances justifying sanctions.

(b) This section shall apply only in Riverside County and San Bernardino County. The Legislature finds and declares that, in order to assess the impact of this section on a limited basis before making it applicable on a statewide basis, it is necessary for this section to be applicable for a limited period of time in those counties.

(c) This section shall remain in effect until January 1, 1991, and on that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1991, deletes or extends that date.

SEC. 2. Section 1021.1 is added to the Code of Civil Procedure, to read:

1021.1. (a) Reasonable attorney's fees, may be awarded in an amount to be determined in the court's discretion, to a party to any civil action as provided by this section, and that award shall be made upon notice and motion by a party and shall be an element of the costs of suit.

(b) A party may be entitled, in the discretion of the court, to an award of attorney's fees under this section if all of the following

conditions are met:

(1) The party has made an offer for judgment under Section 998.

(2) That offer was not accepted within the time provided in Section 998.

(3) The party to whom the offer was made thereafter failed to obtain a more favorable judgment.

The party making the offer shall be entitled to attorney's fees only for legal services rendered after the date of the offer.

(c) In exercising its discretion to award attorney's fees the court shall consider the following factors:

(1) The reasonableness or lack thereof, of a party's failure to accept an offer for judgment under Section 998 in light of the facts known to the party at the time, of which, in light of all of the circumstances, should have been known to the party. Reasonableness shall be determined by a consideration of at least the following matters:

(A) The then apparent merit or lack of merit in the claim that was the subject of the action.

(B) The closeness of the questions of fact and law at issue.

(C) Whether the offeror has unreasonably refused to furnish information necessary to evaluate the reasonableness of the offer.

(D) Whether the action was in the nature of a "test case," presenting questions of far-reaching importance affecting nonparties.

(E) The relief that might reasonably have been expected if the claimant should prevail.

(F) The amount of the additional delay, cost, and expense that the offeror reasonably would be expected to incur if the litigation should be prolonged.

(G) Those other matters that the court may deem relevant in the interest of justice.

(2) The amount of damages and other relief sought and the results obtained for the client.

(3) The efforts made by the parties or the attorneys to settle the controversy.

(4) The existence of any bad faith or abuse of legal procedure by the parties or the attorneys.

(d) In exercising its discretion to determine the amount of attorney's fees to be awarded, the court shall consider the following factors, except that in no event shall the amount awarded exceed a reasonable fee for the services actually rendered.

(1) Customary fees in the community in which the action or proceeding is pending charged by attorneys with similar experience or expertise.

(2) The time and labor reasonably required to be spent by the attorney or attorneys.

(3) The experience and ability of the attorneys generally within the profession and also with respect to the action or proceeding.

(4) The novelty and difficulty of the questions involved and the

skill required to perform the services properly.

(5) The extent to which the acceptance of the particular matter imposes extraordinary burdens on the attorney or attorneys (A) by way of precluding other employment, (B) by the time limitations imposed by the client, or (C) by the circumstances.

(6) Whether the fee is fixed or contingent.

(7) Those other factors that the court may deem relevant in the interest of justice, including any of the factors described in subdivision (c).

(e) Nothing in this section shall be construed to repeal or modify any other statutory provision for the award of attorney's fees or to diminish any express or implied contractual right which a party to a civil action may otherwise have to obtain an award of attorney's fees for the prosecution or defense of an action.

(f) No attorney's fees shall be awarded pursuant to this section in any of the following instances:

(1) Against a party who is proceeding in forma pauperis or a party whom the court has found not to have the financial ability to pay fees or who would suffer an unreasonable financial hardship if ordered to pay fees.

(2) For or against any party with respect to any cause of action under which an award for reasonable attorney's fees is authorized or required by any other federal or California statute.

(3) For or against any party with respect to any cause of action or proceeding commenced or prosecuted under the provisions of Title 7 (commencing with Section 1230.010) of Part 3.

(4) For or against any party in any action in which one or more of plaintiffs seek to proceed as a class under Section 382.

(5) For or against any party as to any cause of action the gravamen of which is personal injury, wrongful death, or injunctive relief.

(g) The determination under this section shall be made after the final disposition of the action.

(h) This section shall apply only in Riverside County and San Bernardino County. The Legislature finds and declares that, in order to assess the impact of this section on a limited basis before making it applicable on a statewide basis, it is necessary for this section to be applicable for a limited period of time in those counties.

(i) This section shall remain in effect until January 1, 1991, and on that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1991, deletes or extends that date.

SEC. 3. (a) It is the purpose of this act to reduce court congestion. It is the further purpose of adding Section 447 to the Code of Civil Procedure to determine whether that section will result in pleadings that are accurate, based upon a reasonable investigation, and are not frivolous. For courts in Riverside County and San Bernardino County the effectiveness of this act shall be determined by whether, and to what extent, this act accomplishes the following goals:

(1) Reduces caseload by 20 percent.

(2) Reduces frivolous actions by 20 percent.

(3) Increases the early settlement of cases by 20 percent.

(b) The Judicial Council shall assess the impact of this act upon the courts to which it applies, and shall report its findings to the Legislature on or before January 1, 1991. The assessment and report shall include a determination of the number of filings in affected courts, the number of issues involving verification of pleadings that were raised, whether those issues required a court hearing, the number of cases in which sanctions were requested under Section 447 of the Code of Civil Procedure, and whether the judges believe that Section 447 of the Code of Civil Procedure contributes to a reduction of unfounded civil litigation. The report shall particularly address whether this act has accomplished the goals set forth in subdivision (a).

(c) The presiding judges of the courts in which this act applies shall cooperate with the Judicial Council in the assessment and report required by this section.

CHAPTER 1004

An act to amend Sections 4200, 5604, and 5763 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 4200 of the Welfare and Institutions Code is amended to read:

4200. Each state hospital under the jurisdiction of the State Department of Mental Health shall have a hospital advisory board of eight members appointed by the Governor from a list of nominations submitted to him by the boards of supervisors of counties within each hospital's designated service area. If a state hospital provides services for both the mentally disordered and the developmentally disabled, there shall be a separate advisory board for the program provided the mentally disordered and a separate board for the program provided the developmentally disabled. To the extent feasible, an advisory board serving a hospital for the mentally disordered shall consist of one member who has been a patient in a state mental hospital and two members shall be the parents, spouse, siblings, or adult children of persons who are or have been patients in a state mental hospital, three representatives of professional disciplines who are not employees of the state hospital system, but who are serving the mentally disordered, and two representatives of the general public who have demonstrated an interest in services to the mentally disordered.

Of the members first appointed after the operative date of the amendments made to this section during the 1975–76 legislative session, one shall be appointed for a term of two years, and one for three years. Thereafter, each appointment shall be for the term of three years, except that an appointment to fill a vacancy shall be for the unexpired term only. No person shall be appointed to serve more than a maximum of two terms as a member of the board.

Notwithstanding any provision of this section, members serving on the hospital advisory board on the operative date of the amendments made to this section during the 1987–88 legislative session, may continue to serve on the board until the expiration of their term. The Legislature intends that changes in the composition of the board required by these amendments apply to future vacancies on the board.

SEC. 2. Section 5604 of the Welfare and Institutions Code, as amended by Chapter 179 of the Statutes of 1986, is amended to read:

5604. (a) Each community mental health service shall have an advisory board of 17 members appointed by the governing body except that the boards in counties with a population of less than 100,000 may have a minimum of 11 members. One member of the advisory board shall be a member of the local governing body. Not less than 51 percent of the members of the advisory board shall be persons representative of the public interest in mental health.

(1) In counties with 100,000 or more population, not less than six of the members representing the public interest shall be persons or the parents, spouse, sibling, or adult children of persons, who are receiving or have received mental health services from a city or county Short-Doyle program or any of its contract agencies, a state hospital, or any public or private nonprofit mental health agency and at least two shall be persons who are receiving or have received mental health services and at least two shall be the parents, spouse, sibling, or adult children of persons receiving or who have received, these mental health services.

(2) In counties under 100,000 population, at least one member shall be a person who is receiving or has received mental health services.

(3) The advisory boards shall contain two physicians, one of whom shall specialize in psychiatry. Not more than two nonpaid members of the governing body of a private or public Short-Doyle contracting agency may be appointed to the advisory board. The remaining members shall be selected from among the following mental health professions: psychology, social work, nursing, marriage and family counseling, psychiatric technology, and hospital or community mental health facility administration. No more than one appointee from each of these professions shall be selected. Persons in the professions of education, law, criminal justice, and fiscal management may be considered as representatives of the general public. For members representing the public interest, the governing body shall appoint persons representing different disciplines.

(b) The term of each member of the board shall be for three years. However, of the members first appointed to a board with 17 members, six shall be appointed for one year, six for a term of two years, and five for a term of three years. For members appointed to boards of less than 17 members, the governing body shall equitably stagger the appointments so that approximately one-third of the appointments shall be for one year, one-third for two years, and one-third for three years. If, however, prior to the expiration of the term a member ceases to retain the status which qualified the person for appointment on the board, the membership on the board shall terminate and there shall be a vacancy on the board.

(c) If two or more local agencies jointly establish a community mental health service under Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the advisory board for the community mental health service shall consist of an additional two members for each additional agency, one of whom shall be a member of the governing body or a person who does not qualify as a professional member under this section designated by the governing body and the second of whom shall be a person or a parent, spouse, sibling, or adult child of a person who has received mental health services.

(d) No member of the advisory board or his or her spouse shall be a full-time or part-time county employee of a county mental health service, an employee of the State Department of Mental Health, or an employee of, or a paid member of the governing body of, a Short-Doyle contract agency. Members of the advisory board shall abstain from voting on any issue in which the member has a financial interest, as defined in Section 87103 of the Government Code.

(e) If it is not possible to secure membership as specified from among persons who reside in the county, the governing body may substitute representatives of the public interest in mental health who are not full-time or part-time employees of the county mental health service, the State Department of Mental Health, or on the staff of, or a paid member of the governing body of, a Short-Doyle contract agency. Members of the advisory board shall abstain from voting on any issue in which the member has a financial interest, as defined in Section 87103 of the Government Code.

(f) The composition of the mental health advisory board shall reflect the minority population found in the county. A statement shall be included in the mental health plan or contract as to the ways equitable representation will be achieved and a timetable for achieving equitable representation.

(g) Notwithstanding any provision of this section, members serving on the advisory board on the operative date of the amendments made to this section during the 1987–88 legislative session, may continue to serve on the board until the expiration of their term. The Legislature intends that changes in the composition of the board required by these amendments apply to future vacancies on the board.

This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1990, deletes or extends that date.

SEC. 3. Section 5604 of the Welfare and Institutions Code, as amended by Section 1 of Chapter 1295 of the Statutes of 1985, is amended to read:

5604. (a) Each community mental health service shall have an advisory board of 17 members appointed by the governing body except that such boards in counties with a population of less than 100,000 may have a minimum of 11 members. One member of the advisory board shall be a member of the local governing body. Not less than 51 percent of the members of the advisory board shall be persons representative of the public interest in mental health.

(1) In counties with 100,000 or more population, not less than six of the members representing the public interest shall be persons or the parents, spouse, sibling, or adult children of persons, who are receiving or have received mental health services from a city or county Short-Doyle program or any of its contract agencies, a state hospital, or any public or private nonprofit mental health agency and at least two shall be persons who are receiving or have received mental health services and at least two shall be the parents, spouse, sibling, or adult children of persons receiving or who have received mental health services.

(2) In counties under 100,000 population, at least one member shall be a person who is receiving or has received mental health services.

(3) The advisory boards shall contain two physicians, one of whom shall specialize in psychiatry, and the remaining members shall be selected from among the following mental health professions: psychology, social work, nursing, marriage and family counseling, psychiatric technology, and hospital or community mental health facility administration. No more than one appointee from each of these professions shall be selected. Persons in the professions of education, law, criminal justice, and fiscal management may be considered as representatives of the general public. For members representing the public interest, the governing body shall appoint persons representing different disciplines.

(b) The term of each member of the board shall be for three years. However, of the members first appointed to a board with 17 members, six shall be appointed for one year, six for a term of two years, and five for a term of three years. For members appointed to boards of less than 17 members, the governing body shall equitably stagger the appointments so that approximately one-third of the appointments shall be for one year, one-third for two years, and one-third for three years. If, however, prior to the expiration of such term a member ceases to retain the status which qualified the person for appointment on the board, the membership on the board shall terminate and there shall be a vacancy on the board.

(c) If two or more local agencies jointly establish a community

mental health service under Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the advisory board for the community mental health service shall consist of an additional two members for each additional agency, one of whom shall be a member of the governing body or a person who does not qualify as a professional member under this section designated by the governing body and the second of whom shall be a person or a parent, spouse, sibling, or adult child of a person who has received mental health services.

(d) No member of the advisory board or his or her spouse shall be a full-time or part-time county employee of a county mental health service, an employee of the State Department of Mental Health, or an employee of, or a member of the governing body of, a Short-Doyle contract agency.

(e) If it is not possible to secure membership as specified from among persons who reside in the county, the governing body may substitute representatives of the public interest in mental health who are not full-time or part-time employees of the county mental health service, the State Department of Mental Health, or on the staff of, or a member of the governing body of, a Short-Doyle contract agency.

(f) The composition of the mental health advisory board shall reflect the minority population found in the county. A statement shall be included in the mental health plan or contract as to the ways equitable representation will be achieved and a timetable for achieving equitable representation.

This section shall become operative January 1, 1990.

SEC. 4. Section 5763 of the Welfare and Institutions Code is amended to read:

5763. There is a California Council on Mental Health to advise and assist the Legislature and the Director of Mental Health in carrying out the provisions of this division. The State Department of Mental Health shall cooperate fully with the California Council on Mental Health by rendering efficient accounting, financial management, personnel, and other reasonable support services when requested by the council in the performance of its powers and duties.

The attachment of the California Council on Mental Health to the State Department of Mental Health shall not limit the council's scope of concern to mental health programs or limit the council's responsibilities or functions regarding all other pertinent state and local programs, as defined in subdivision (c) of Section 5764.

The administrative attachment of the council to the State Department of Mental Health shall not be construed to interfere in any way with the provisions of Section 5766.2 requiring all personnel employed by the council to be responsible to the council.

The council shall consist of 15 appointed voting members. There shall be one member who shall be a member of the California Conference of Local Mental Health Directors. There shall be five

members chosen from among the following professions: general medicine, psychiatry, psychology, social work, marriage, family and child counseling, sociology, nursing, and mental health administration. For the purposes of this section, "marriage, family and child counselor" shall mean a licensed marriage, family and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981. No more than one appointee from each of these categories shall be selected. Nine members shall be representative of the public interest in mental health of which at least two shall be persons receiving or who have received mental health services from a city or county Short-Doyle program or any of its contract agencies, a state hospital, or any other public or private nonprofit mental health agency, and two of which shall be the parents, spouse, sibling, or adult children of persons receiving or who have received mental health services from a city or county Short-Doyle program or any of its contract agencies, a state hospital or any other public or private nonprofit mental health agency. At least one of the public interest members shall be a local mental health advisory board member at the time of appointment; one shall be a member of a county board of supervisors; one shall be a lawyer; and one shall be an expert in fiscal management. No public interest members shall be members of the professions named above.

Appointments shall reflect a balance of geographic, ethnic, racial, age, linguistic, socioeconomic and sexual factors. Appointees shall have a demonstrated interest in and knowledge of statewide mental health services.

The Governor shall appoint the following nine members of the council: two professional members who are not psychiatrists; two members of the public who are receiving or who have received mental health services; two members of the public who are the parents, spouse, sibling, or adult children of persons receiving or who have received mental health services; and three public members. The Senate Rules Committee shall appoint the following three members of the council: one psychiatrist; one professional member who is not a psychiatrist; and one member of the general public. None of the members or the spouse of a member shall be an employee of a state department within the Health and Welfare Agency. The Speaker of the Assembly shall appoint the following three members of the council: two professional members and one member of the general public. Each member shall hold office for three years.

If prior to the expiration of a term a member ceases to retain the status which qualified him or her for appointment on the council, his or her membership on the council shall terminate and there shall be a vacancy on the council.

The members of the California Council on Mental Health shall

serve without compensation but shall be reimbursed for any actual and necessary expenses incurred in connection with the performance of their duties under this chapter.

The California Council on Mental Health shall meet at least quarterly, and on call of the council chair as often as necessary to fulfill its duties. All meetings and records of the California Council on Mental Health shall be open to the public.

The California Council on Mental Health shall, by majority vote of the voting members, elect its own chair from among the 15 appointed members, and shall establish such committees as it deems necessary or desirable. The council chair shall appoint all members of committees of the California Council on Mental Health.

Notwithstanding any provision of this section, members serving on the council on the operative date of the amendments made to this section during the 1987–88 legislative session, may continue to serve on the board until the expiration of their term. The Legislature intends that changes in the composition of the board required by these amendments apply to future vacancies on the board.

SEC. 5. The State Department of Mental Health shall report to the Legislature on a one-time basis, the effects of changing the structure of the state hospital advisory boards, the local mental health advisory boards, and the California Council on Mental Health. The report shall be included within the Annual State Plan prepared for 1989 by the State Department of Mental Health, and shall include any input provided by the advisory board and the council.

CHAPTER 1005

An act to add Chapter 4 (commencing with Section 653.75) to Title 15 of Part 1 of, and to add Sections 13128 and 13154 to, the Penal Code, relating to crime.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Chapter 4 (commencing with Section 653.75) is added to Title 15 of Part 1 of the Penal Code, to read:

CHAPTER 4. CRIMES COMMITTED WHILE IN CUSTODY IN CORRECTIONAL FACILITIES

653.75. Any person who commits any public offense while in custody in any local detention facility, as defined in Section 6031.4, or any state prison, as defined in Section 4504, is guilty of a crime. That crime shall be punished as provided in the section prescribing the punishment for that public offense.

SEC. 2. Section 13128 is added to the Penal Code, to read:

13128. For purposes of the maintenance of criminal records pursuant to Chapter 4 (commencing with Section 653.75) of Title 15, whenever a person is arrested for a public offense committed while in custody in any local detention facility, as defined in Section 6031.4, or any state prison, as defined in Section 4504, the state summary criminal history record shall include the section number of the public offense violated and information related to the "in custody" status of that person.

SEC. 3. Section 13154 is added to the Penal Code, to read:

13154. Each reporting agency shall report to the Department of Justice each arrest for the commission of a public offense while in custody in any local detention facility, or any state prison, as provided in Chapter 4 (commencing with Section 653.75) of Title 15, for inclusion in that person's state summary criminal history record. The report shall include the public offense committed and a reference indicating that the offense occurred while the person was in custody in a local detention facility or state prison.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1006

An act to amend Section 190 of the Penal Code, relating to murder.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 190 of the Penal Code is amended to read:

190. (a) Every person guilty of murder in the first degree shall suffer death, confinement in state prison for life without possibility of parole, or confinement in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Except as provided in subdivision (b), every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 15 years to life.

The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code shall apply to reduce

any minimum term of 25 or 15 years in a state prison imposed pursuant to this section, but such person shall not otherwise be released on parole prior to such time.

(b) Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 25 years to life if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a) or (b) of Section 830.2, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew or reasonably should have known that the victim was such a peace officer engaged in the performance of his or her duties.

The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code shall not apply to reduce any minimum term of 25 years in state prison when the person is guilty of murder in the second degree and the victim was a peace officer, as defined in this subdivision, and such person shall not be released prior to serving 25 years confinement.

SEC. 2. Section 1 of this act amends an initiative statute and shall become effective only when submitted to and approved by the electors pursuant to subdivision (c) of Section 10 of Article II of the California Constitution.

CHAPTER 1007

An act to repeal and add Section 9527 of the Welfare and Institutions Code, relating to the Senior Companion Program.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 9527 of the Welfare and Institutions Code is repealed.

SEC. 2. Section 9527 is added to the Welfare and Institutions Code, to read:

9527. This chapter shall be operative to the extent funds are appropriated for the purposes of this chapter.

CHAPTER 1008

An act to amend Section 9304 of the Welfare and Institutions Code, relating to elderly persons.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 9304 of the Welfare and Institutions Code is amended to read:

9304. Subject to the State Civil Service Act, the director shall appoint any assistants and other employees as are necessary for the administration of the affairs of the department, and shall prescribe their duties. Appointments shall be made that ensure programs, policy development and evaluation will be administered by employees having gerontological training or relevant experience. Appointments shall be made in accordance with the age-affirmative policy established by state law, the department, and the State Personnel Board which shall serve as a model for employing qualified persons 60 years of age or older.

The department shall appoint, by January 1, 1982, seven persons with expertise in the following areas: preventative and traditional health services, social service, employment/education/preretirement training, transportation, mental health, housing, and crime against the elderly and elder abuse. Persons serving in these positions shall do all of the following:

(a) Provide technical assistance to area agencies on aging.

(b) Act as liaisons with appropriate state and federal agencies.

(c) Be responsible for being currently informed about grants, programs, and services available to older persons in California.

The Department of Housing and Community Development shall provide to the department copies of each of its publications which contain information relative to housing options for seniors. The department shall ensure that all appropriate local, state, or federal housing information received by the department shall be disseminated to its aging services network on a timely basis.

The department shall encourage internships, to be coordinated with schools of gerontology or related disciplines. The department shall also encourage internships for older persons.

The department shall designate employees to provide information and technical assistance to rural area agencies on aging. These staff persons shall be familiar with all the programs and funding available to rural areas and shall inform the rural area agencies on aging of these programs and funding.

CHAPTER 1009

An act to add Section 11738.5 to the Insurance Code relating to workers' compensation.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 11738.5 is added to the Insurance Code, to read:

11738.5. (a) An insurer shall not use any plan for the payment of dividends to policyholders by reason of a participating provision in a workers' compensation insurance policy which is unfairly discriminatory.

(b) Every insurer issuing workers' compensation insurance policies under the laws of this state shall file annually with the rating organization designated by the commissioner information relating to dividend payments made to its policyholders. Information filed shall be in sufficient detail to permit the rating organization to prepare for the commissioner's review and approval, a report showing in the aggregate for all companies premiums earned, losses incurred, and dividends paid the preceding calendar year under policies containing a participating provision, separately by premium size and loss ratio categories, as may reasonably be prescribed by the commissioner.

(c) Information submitted by individual companies pursuant to this section shall be confidential and not subject to public disclosure under any law of this state.

CHAPTER 1010

An act to add Section 33608 to the Health and Safety Code, and to add Section 97.9 to the Revenue and Taxation Code, relating to redevelopment.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 33608 is added to the Health and Safety Code, to read:

33608. (a) All acts and proceedings heretofore or hereafter taken under color of law by a charter city meeting the criteria of subdivision (g) and its redevelopment agency in a county with a population over 4,000,000 with respect to a reimbursement

agreement executed pursuant to Section 33445 of the Health and Safety Code dated July 7, 1986, and as amended as of July 13, 1987, are hereby confirmed, validated, and declared legally effective to the extent the agreement could have been authorized by the Legislature initially, except as to limitations imposed by the California and United States Constitutions. The validation provided by this section shall be the only determination necessary to satisfy the requirement of subdivision (e) of Section 33675 of the Health and Safety Code and those provisions shall not apply to the agreement otherwise. The Legislature finds and declares that this section is consistent with existing law and does not conflict with either Article XIII B or Section 16 of Article XVI of the California Constitution.

(b) If the commencement of reimbursement of the principal amount of indebtedness of the agency under an agreement referred to in subdivision (a), or any predecessor agreement executed pursuant to Section 33445 of the Health and Safety Code, is delayed beyond 10 years after the date of execution of the agreement for any reason, the agency and the city may amend or enforce the reimbursement agreement, or any predecessor thereto, to provide for the payment of interest. The interest may accrue, as to reimbursement for any particular property or improvement, from the date of acquisition, construction, or installation thereof until the date of the reimbursement agreement and thereafter, until payment of the principal and interest by the agency. The interest shall be at the rate specified in the reimbursement agreement, not to exceed the rate of interest earned by the treasurer of the city on investments of the city's pooled funds. Subject to that limitation, interest on the indebtedness may be calculated pursuant to any generally accepted method of computation, including, without limitation, any method which allows the compounding of interest monthly or at other appropriate intervals.

(c) Reimbursements for any indebtedness under the reimbursement agreement referred to in subdivision (a) shall be (1) first allocated for the funding requirements of the fire and police retirement fund of the city and (2) then deposited into the Low and Moderate Income Housing Fund of the agency. However, this section shall not be construed to authorize any reimbursement of indebtedness which is not permissive under Section 16 of Article XVI of the California Constitution.

(d) The reimbursement agreement shall not be amended without the approval of the Legislature, by statute, and the obligation created by the reimbursement agreement shall terminate on December 31, 2014.

(e) In addition to any amounts provided to the city's fire and police retirement system under the reimbursement agreement, to the extent permitted by law, the city shall undertake, by ordinance, to contribute additional moneys from its general fund annually and transfer assets (including, without limitation, income producing assets such as parking garages) as necessary and actuarially

appropriate to satisfy its fire and police retirement fund obligation. When this obligation has been actuarily funded, all assets contributed pursuant to this section shall revert to the city.

(f) The obligations created by the reimbursement agreement specified in subdivision (a) shall be deemed to be existing obligations for purposes of subdivision (d) of Section 33334.6 incurred by the agency to finance a redevelopment project existing on, and created prior to, January 1, 1986. The statement of existing obligations required by subdivision (f) of Section 33334.6 shall be deemed amended to include the obligations created by this reimbursement agreement. The agency shall make deposits into the Low and Moderate Income Housing Fund of the agency in accordance with the reimbursement agreement. These deposits shall be the only obligations that the agency shall have to deposit money in the Low and Moderate Income Housing Fund under subdivision (a) of Section 33334.2 or Section 33334.6, with respect to the project area subject to the reimbursement agreement, notwithstanding any other provision of law.

(g) This section applies to any charter city meeting all of the following criteria:

(1) The city's retirement system is part of the city's charter and was approved by the voters before July 1, 1978.

(2) The city did not levy a separate ad valorem property tax rate to support the retirement system in the 1983–84 fiscal year.

(3) The retirement system provides for a cost-of-living adjustment which is indexed to a consumer price index and does not limit the annual increases which may be paid to members after their retirement.

(4) The retirement system is not currently available to newly hired fire and police employees and will not be available in the future.

(5) Before January 1, 1985, the city unsuccessfully litigated a limit to the cost-of-living adjustment which may be paid to members of the retirement system after their retirement.

(6) The governing body of the city has, by resolution, elected to make this section applicable to it. This election shall be final and binding and may not be revoked for any reason.

(h) "Agency," as used in this section, includes a community development commission exercising the powers of a redevelopment agency pursuant to Section 34141.

SEC. 2. Section 97.9 is added to the Revenue and Taxation Code, to read:

97.9. (a) Notwithstanding any other provision of this part or Part 8 (commencing with Section 4651) of Division 1, when all loans, advances, or indebtedness incurred to finance or refinance a redevelopment project subject to a reimbursement agreement validated by Section 33608 of the Health and Safety Code have been paid as provided in subdivision (b) of Section 33670 of the Health and Safety Code, the portion of taxes specified in subdivision (b) of this

section that is produced by property within the redevelopment project area and that would otherwise have been allocated and distributed to the city, shall instead be allocated and distributed as follows:

(1) Fifty percent of these tax revenues shall be distributed to the affected school entities specified in Section 95 until the school entities have received the amount, including interest, specified in this subdivision. The amount of taxes allocated under this subdivision shall be equal to the aggregate amount of taxes that would have otherwise been received by the school entities in the years 2006 to 2014, inclusive, but for the reimbursement paid to the city pursuant to the agreement specified in Section 33608 of the Health and Safety Code, plus simple interest on the unpaid balance at an annual rate of 7 percent, accruing from and after January 1, 2006, until payment in full.

(2) The balance of these tax revenues shall be paid to the city, including the remainder of the portion of taxes specified in subdivision (b) available after the distribution made pursuant to paragraph (1).

(b) This section applies to that portion of the property tax revenues from property within the redevelopment project area subject to Section 33608 of the Health and Safety Code which is in excess of the property tax revenues that would be produced by the rate upon which the tax is levied each year by or for the city upon the total sum of the assessed value of the taxable property in the redevelopment project area as shown upon the assessment roll used in connection with the taxation of the property by the city, last equalized prior to the effective date of the ordinance approving the final redevelopment plan for that redevelopment project area.

(c) For purposes of all other allocations of property taxes under this code, the amount allocated to school entities by this section shall be treated as having been allocated to the city.

(d) The county auditor may assess the city for, and the city shall pay to the county auditor, the actual costs of making the reallocation and payment of property taxes required by this section.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 1011

An act to amend Sections 53179, 53181, and 53183 of, and to add Section 53179.5 to, the Government Code, relating to public finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 53179 of the Government Code is amended to read:

53179. Unless the context otherwise requires, the definitions contained in this article shall govern the construction of this chapter.

(a) "District" means the area of land included within an integrated financing district established pursuant to this chapter.

(b) "Financing act" means the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) 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 Landscaping and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code), the Vehicle Parking District Law of 1943 (Part 1 (commencing with Section 31500) of Division 18 of the Streets and Highways Code), the Parking District Law of 1951 (Part 4 (commencing with Section 35100) of Division 18 of the Streets and Highways Code), the Park and Playground Act of 1909 (Chapter 7 (commencing with Section 38000) of Part 2 of Division 3 of Title 4 of this code), the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of this title), the Benefit Assessment Act of 1982 (Chapter 6.4 (commencing with Section 54703) of Part 1 of Division 2 of this title), and the so-called facilities benefit assessment levied by the charter city of San Diego or any substantially similar assessment levied for the same purpose by any other charter city pursuant to any ordinance or charter provision.

(c) "Fund" means the District Reimbursement Fund created pursuant to Section 53197.

(d) "Landowner" or "owner of land" has the same meaning as in the financing act employed in conjunction with this chapter.

(e) "Legislative body" means the legislative body, governing board, or board of directors of any local agency.

(f) "Local agency" means any city or county, whether general law or chartered, special district, school district, joint powers entity created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, or any other municipal corporation or district.

SEC. 2. Section 53179.5 is added to the Government Code, to read:

53179.5. (a) The legislative bodies of two or more local agencies may enter into a joint public facilities financing agreement pursuant to this section or into a joint exercise of powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 to exercise any power authorized by this chapter if the legislative body of each entity adopts a resolution declaring that a joint agreement would be beneficial to the residents of that entity.

(b) Notwithstanding Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, a contracting party may use the proceeds of any levy made pursuant to this chapter, or of any indebtedness or warrants issued pursuant to this chapter, to provide facilities or services which that contracting party is otherwise authorized by law to provide, even though another contracting party does not have the power to provide those facilities or services.

(c) The agreement entered into pursuant to subdivision (a) shall contain a description of the facilities and services to be provided or acquired under the agreement. The agreement shall also provide for the division of responsibility to provide any of the facilities or services among the entities entering into the agreement. The agreement shall provide for the allocation and distribution of the proceeds of any special tax levy among the parties to the agreement.

SEC. 3. Section 53181 of the Government Code is amended to read:

53181. Proceedings to create an integrated financing district shall be instituted by the local agency by adopting a resolution of intention to create the integrated financing district which shall include all of the following, and which may be combined with any similar resolution required in the financing act:

(a) A statement that the local agency will proceed under the authority of this chapter.

(b) A description of the boundaries of the proposed integrated financing district, which need not be the same as the boundaries of the district created pursuant to the financing act.

(c) A description of the rates and methods of apportionment over time of any levy proposed under this chapter, and the contingencies under which each levy will be made. A contingent assessment shall be specified as a fixed dollar amount per unit of area for parcels developed into each of several land use categories, as determined by the legislative body, except that the legislative body may provide that the fixed dollar amount may be adjusted annually by an interest rate, as determined by the legislative body. The cumulative interest rate adjustment shall not exceed 100 percent.

(d) A description of the proposed uses of funds arising from any levy made pursuant to this chapter, including a description of any facilities to be constructed with the funds, and an estimate of the cost of those facilities.

(e) A description of any proposed reimbursement agreement.

(f) A statement that a public hearing on proposals made under this chapter will be combined with any hearing or hearings required under the financing act, and a description of the procedures for interested persons to protest against the proposals.

SEC. 4. Section 53183 of the Government Code is amended to read:

53183. (a) At any time not later than the hour set for hearing objections to the proposed work, any owner of property liable to be assessed pursuant to this chapter may make a written protest against the proposed work, the extent of the territory to be assessed, the proposed rate and method of apportionment of any contingent assessments, any levy proposed to be made pursuant to a financing act, any agreement entered into pursuant to the financing act or pursuant to this chapter, or any combination thereof. Any protest pertaining to a levy made pursuant to a financing act shall be heard and shall have the force and effect provided in the financing act. Any protest pertaining to a contingent assessment shall be in writing, contain a description of the property in which each signer is interested, sufficient to identify the property, and, if the signers are not shown on the last equalized assessment roll as the owners of the property, contain, or be accompanied by, written evidence that the signers are the owners of the property. All of the protests shall be delivered to the clerk and no other protests or objections shall be considered.

(b) At the time set for hearing protests, the legislative body shall proceed to hear and pass upon all protests so made and its decision shall be final and conclusive. The legislative body may adjourn the hearings from time to time. Any protest may be withdrawn, in writing, by the owner making the protest at any time prior to the conclusion of the protest hearing.

(c) In lieu of hearing and passing upon protests, the legislative body may continue the hearing of protests to a day certain and refer the protests to the superintendent of streets for investigation, report, and recommendation as to the improvement and matters included in the protests. The report and recommendation of the superintendent of streets shall be in writing, and a copy thereof shall be mailed not less than five days prior to the continued hearing date for protests to each person owning property liable to be assessed who has made a written protest. At the time set for the continued hearing, the legislative body shall hear and pass upon the report and recommendation of the superintendent of streets and its decision shall be final and conclusive. The legislative body may adjourn the hearing from time to time. Protests may be withdrawn in the same manner as provided in subdivision (b).

(d) If the protest is against the proposed contingent assessment and the legislative body finds that the protest is made by the owners of more than one-half of the area of the property within the proposed integrated financing district which is proposed to be subject to the contingent assessment immediately or in the future, or which is

proposed to be subject to a levy made pursuant to a financing act immediately or in the future, and protests are not withdrawn so as to reduce the same to less than a majority, no further proceedings to levy the specified contingent assessment shall be taken pursuant to this chapter for a period of one year from the date of the decision of the legislative body on the hearing.

(e) If it is necessary to determine whether any or all of the signers of written protests are the owners of property to be assessed, in order to find whether a majority protest exists, the legislative body shall make that determination from the last equalized assessment roll, any written evidence submitted with a written protest, and any other evidence received at the hearing. The legislative body shall be under no duty to obtain or consider any other evidence as to ownership of property and its determination of ownership shall be final and conclusive.

(f) If no written protests have been delivered to the clerk up to the hour set for hearing protests, if protests have been found by the legislative body to be insufficient or have been overruled, or if protests against the extent of the proposed district have been heard and denied, the legislative body shall immediately have jurisdiction to order the contingent assessment to be levied, and to enter into a proposed reimbursement agreement.

(g) Nothing in this chapter prohibits the legislative body, within the one-year period referred to in subdivision (d), from commencing and carrying on new proceedings for the levy of the proposed contingent assessment or entry into the proposed reimbursement agreement which was subject to protest if the legislative body finds, by the affirmative vote of four-fifths of its members, that the owners of a majority of the property within the area of the integrated financing district are in favor of commencing and carrying on those proceedings.

SEC. 5. Notwithstanding Section 29080 of the Government Code, for the 1987–88 fiscal year counties shall begin public hearings on their final 1987–88 budgets no later than September 11, 1987, and shall complete these hearings and adopt the final budget on or before September 21, 1987.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for counties to know their exact allocation from local assistance legislation and thereby reduce cuts required in their budgets, and in order to clear up certain legal ambiguities to allow localities to create integrated financing districts as a method of financing capital facilities, thereby avoiding costs arising from delays in development projects, it is necessary that this act take effect immediately.

CHAPTER 1012

An act to amend Sections 44680.10, 51873.1, and 51875 of the Education Code, relating to education.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 44680.10 of the Education Code is amended to read:

44680.10. (a) Each policy board shall operate pursuant to guidelines established by the local education agency of the region which the teacher education and computer center serves and shall meet as necessary.

(b) Policy boards shall do all of the following:

(1) Determine program emphasis and direct and guide center staff to ensure that staff development services are generally available within the region.

(2) Select center staff, with the concurrence of the superintendent representing the center's local education agency, and contract for other needed services through the county office of education serving as the local education agency for the center.

(3) Offer opportunities for agencies and other parties to be heard at board meetings.

(4) Adopt bylaws to guide board meetings.

(5) Adopt a center budget and plan and recommend each expenditure of funds to the local education agency. The county office of education, acting as the local education agency, shall notify the policy board in writing of any funds that will be expended for purposes that do not conform with approved local program plans and policy board recommendations, and the reasons for the proposed expenditures. The county office of education shall submit this notification to the policy board whenever the policy board's budget or work plan is changed, but in no instance less than 30 days in advance of the anticipated expenditure.

(c) Any actions taken by the policy boards shall be subject to all of the limitations imposed by law upon county offices of education.

SEC. 2. Section 51873.1 of the Education Code is amended to read:

51873.1. The duties of the Educational Technology Committee shall include, but not be limited to, the following:

(a) Apprising the State Board of Education and the Superintendent of Public Instruction of continuing developments in information technologies and their application to education.

(b) Serving in an advisory capacity to the State Department of Education in the appropriate use of new technologies.

(c) Advising the State Board of Education on the allocation of

grants for educational software research and development pursuant to paragraph (4) of subdivision (b) of Section 51873.3, grants to teachers pursuant to paragraph (8) of subdivision (b) of Section 51873.3, educational technology local assistance program matching grants pursuant to Sections 51875 and 51875.5, matching grants to school districts to support model staff development activities pursuant to paragraph (4) of subdivision (a) of Section 51875, grants for job market studies pursuant to Section 51875.7, grants to public postsecondary educational institutions pursuant to Section 51875.9, grants to teacher education and computer centers pursuant to Section 51876, and grants to the California Public Broadcasting Commission pursuant to Section 51877.

In the allocation of grants pursuant to this section, consideration shall be given to successful ongoing programs, including exemplary projects for mathematics, reading, and science, as well as instructional television programs.

(d) Advising the State Board of Education on efforts to ensure equal student access to computer education programs taking into account varied socioeconomic conditions, urban-rural differences, gender, and developments in knowledge of the learning process.

(e) Submitting an annual budget request identifying proposed funding levels for the educational technology local assistance program to the State Board of Education and the Legislature.

(f) Developing standards for educational computer software purchased pursuant to this article.

(g) Assessing the quality of preparation for employment in technological fields provided by the public secondary school system, and developing a long-range statewide strategy for improving that preparation. The strategy shall include, but not be limited to, all of the following:

(1) Solutions to address the problem of the decline in mathematics and science skills of both teachers and students.

(2) Methods for mobilizing and integrating private sector involvement in public secondary school programs in technological fields.

(3) A method for periodic reassessment of the need for preparation for employment in technological fields.

SEC. 3. Section 51875 of the Education Code is amended to read:

51875. (a) A school district shall be eligible to apply for an educational technology local assistance program matching grant which provides ten dollars ($10) of funding for every one dollar ($1) provided by the school district for any of the following purposes:

(1) The use of educational technology in the programs of the school district.

(2) Any use of computers in the school district's instructional programs.

(3) A proposed reading, math, or science project meeting the criteria specified in Section 51875.3.

(4) Any use of educational technologies to develop model

programs for staff development or to disseminate these model programs to strengthen curriculum or improve instruction.

(b) Use of funds pursuant to paragraphs (1) and (2) shall be based upon a plan approved by the governing board of the school district. The plan may be submitted to the Educational Technology Committee or the State Department of Education, and shall be available for purposes of an audit or the investigation of a complaint.

(c) The application for an educational technology local assistance program matching grant pursuant to this section shall be kept as simple as possible, and may be incorporated in the applicant district's consolidated application for state and federal program funds pursuant to Division 5 (commencing with Section 3900) of Title 5 of the California Administrative Code. The application shall include assurance of compliance with the provisions of Section 51875.1 or 51875.3, as necessary.

SEC. 3.5. Section 51875 of the Education Code, as amended by Section 1 of Assembly Bill 2293, is amended to read:

51875. (a) A school district shall be eligible to apply for an educational technology local assistance program matching grant that provides ten dollars ($10) of funding for every one dollar ($1) provided by the school district for any of the following purposes:

(1) The use of educational technology in the programs of the school district.

(2) Any use of computers in the school district's instructional programs.

(3) A proposed reading, math, or science project meeting the criteria specified in Section 51875.3.

(4) Any use of educational technologies to develop model programs for staff development or to disseminate these model programs to strengthen curriculum or improve instruction.

(b) Use of funds pursuant to paragraphs (1) and (2) shall be based upon a plan approved by the governing board of the school district. The plan may be submitted to the Educational Technology Committee or the State Department of Education, and shall be available for purposes of an audit or the investigation of a complaint.

(c) The application for an educational technology local assistance program matching grant pursuant to this section shall be kept as simple as possible, and may be incorporated in the applicant district's consolidated application for state and federal program funds pursuant to Division 5 (commencing with Section 3900) of Title 5 of the California Administrative Code. The application shall include assurance of compliance with the provisions of Section 51875.1 or 51875.3, as necessary.

(d) Any school that has received an educational technology local assistance program matching grant shall be ineligible for any additional grant funding under this article, except if the purpose of issuing the additional grant, at least in part, is to correct disparities between schools receiving grants under this article as to the amount of grant funding received per pupil, which additional grant would

reduce those disparities.

(e) The State Department of Education, the Educational Technology Committee, and all regional organizations shall make reasonable efforts to assist schools that have not applied for grants under this article to apply for those grants and, pursuant to the receipt of grant funding, to implement educational technology programs in those districts.

SEC. 4. (a) The Legislature finds and declares both of the following:

(1) That the Budget Act of 1986 appropriated five hundred thousand dollars ($500,000) to the California Postsecondary Education Commission for the purpose of conducting a study to survey current staff development programs supporting both kindergarten and grades 1 to 12, inclusive, and postsecondary education in the state.

(2) That the focus of the study is to determine the number, extent, variety, and costs of these programs, as well as to recommend long term state policies with regard to faculty and staff development.

SEC. 5. The Education Technology Committee is hereby authorized and directed to analyze the results of the California Postsecondary Education Commission study when it becomes available in January 1988, and to make recommendations to the State Board of Education regarding the adequacy of current staff development efforts for kindergarten and grades 1 to 12, inclusive, to support education technology training in the state.

SEC. 6. Section 3.5 of this bill incorporates amendments to Section 51875 of the Education Code proposed by both this bill and AB 2293. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1988, (2) each bill amends Section 51875 of the Education Code, and (3) this bill is enacted after AB 2293, in which case Section 51875 of the Education Code, as amended by AB 2293, shall remain operative only until the operative date of this bill, at which time Section 3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1013

An act to amend Sections 53972.5, 53978, 56036, 56100, 56375, 56835, and 61623.4 of, to repeal Sections 56115 and 56848 of, and to add Section 56848.3 to, the Government Code, to add Part 3 (commencing with Section 13800) to, and to repeal Part 2.7 (commencing with Section 13801) of, Division 12 of, the Health and Safety Code, to add Sections 20811, 20812, and 20813 to the Public Contract Code, to amend Section 5782.22 of the Public Resources Code, to amend Section 16463.5 of the Public Utilities Code, and to amend Sections 35412 and 71680 of, and to repeal and add Article 7 (commencing with Section 31120) of Part 5 of Division 12 of, the Water Code, relating to fire protection.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 53972.5 of the Government Code is amended to read:

53972.5. A proposal for the creation of a local agency for the purpose of providing fire protection, prevention, or suppression services directly, by contract with another local agency, or pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) 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.

SEC. 2. Section 53978 of the Government Code is amended to read:

53978. (a) Any local agency which provides fire protection or prevention services directly, by contract with another local agency, or which provides such services pursuant to Section 25643 of this code or the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of Division 12 of the Health and Safety Code, or which provides police protection services, may, by ordinance, determine and propose for adoption a special tax for fire protection and prevention provided by the local agency, or a special tax for police protection services provided by the local agency, or both of such special taxes if both such services are provided by the local agency, other than ad valorem property taxes, pursuant to this section. The legislative body may establish zones or areas within the local agency and may restrict the levy of the special tax to those zones or areas. Such proposition shall be submitted to the voters of the affected area

or zone, or of the district, and shall take effect upon approval of two-thirds of the voters voting upon such proposition. The local agency which fixes such a special tax shall not, however, impose such tax upon a federal or state governmental agency or another local agency.

(b) The ordinance submitted to voter approval pursuant to subdivision (a), shall specify the amount of each of such special taxes. Each of such special taxes shall be levied on a parcel, class of improvement to property, or use of property basis, or a combination thereof, within the local agency to which fire protection services or police protection services are made available, for the purpose of obtaining, furnishing, operating, and maintaining fire suppression and police protection equipment or apparatus or either such service, respectively, for paying the salaries and benefits to firefighting and police protection personnel or either such personnel, respectively, and for such other necessary fire protection and prevention expenses and police protection expenses, respectively, or either such expenses of the local agency in such area, zone, or local agency to which fire protection and prevention services or police protection services, or both, are made available.

An ordinance which sets a maximum amount of the tax to be levied on a parcel, class of improvement to property, or use of property basis, or a combination thereof, and which permits the local agency proposing the tax to determine the amount to be levied, annually, within the maximum amount, shall satisfy the requirements of this section. However, in no case shall the amount of the tax to be levied exceed the maximum amount established by the ordinance without the approval of the voters as prescribed in subdivision (a).

(c) The amount of each such special tax established by the legislative body, and approved by the voters of the local agency, may be varied to each parcel, improvement, or use of property based on the degree of availability of fire protection and prevention services or police protection services, respectively, in the affected area, and may restrict such charges to areas lying within one or more zones or areas established in such local agency.

(d) The legislative body may provide for the collection of the special taxes in the same manner and subject to the same penalty as, or with, other charges and taxes fixed and collected by the local agency, or by the county on behalf of the local agency. If such special taxes are collected by the county on behalf of the local agency, the county may deduct its reasonable costs incurred for such service before remittal of the balance to the local agency.

(e) The revenues from each of such special taxes shall be used for the service for which it was imposed, and for no other purpose.

(f) This section does not limit or prohibit the levy or collection or any other fee, charge, or tax, or any license or service fee or charge for fire prevention or protection services or police protection services as provided by other provisions of law.

SEC. 3. Section 56036 of the Government Code is amended to

read:

56036. (a) "District" or "special 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. "District" or "special district" includes a county service area, but excludes all of the following:

(1) The state.

(2) A county.

(3) A city.

(4) A school district or a community college district.

(5) A special assessment district.

(6) An improvement district.

(7) A community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5.

(8) A permanent road division formed pursuant to Article 3 (commencing with Section 1160) of Chapter 4 of Division 2 of the Streets and Highways Code.

(9) An air pollution control district or an air quality maintenance district.

(10) A service zone of a fire protection district.

(b) Except as otherwise provided in paragraph (1), each of the entities listed in paragraph (1) is a "district" or a "special district" for the purposes of this division.

(1) For the purposes of Chapter 1 (commencing with Section 57000) to Chapter 7 (commencing with Section 57175), inclusive, of Part 4 or Part 5 (commencing with Section 57300), none of the following entities is a "district" or a "special district":

(A) A unified or union high school library district.

(B) A bridge and highway district.

(C) A joint highway district.

(D) A transit or rapid transit district.

(E) A metropolitan water district.

(2) Any conducting authority proceedings for a change of organization involving an entity described in paragraph (1) shall be conducted pursuant to the principal act authorizing the establishment of that entity.

(c) Except as otherwise provided in paragraph (1), each of the entities listed in paragraph (1) is a "district" or "special district" for purposes of this division.

(1) For the purposes of Chapter 1 (commencing with Section 57000) to Chapter 7 (commencing with Section 57175), inclusive, of Part 4 or Part 5 (commencing with Section 57300), none of the following entities is a "district" or "special district" if the commission of the principal county determines, in accordance with Sections 56127 and 56128, that the entity is not a "district" or "special district."

(A) A flood control district.

(B) A flood control and floodwater conservation district.

(C) A flood control and water conservation district.

(D) A conservation district.
(E) A water conservation district.
(F) A water replenishment district.
(G) The Orange County Water District.
(H) A California water storage district.
(I) A water agency.
(J) A county water authority or a water authority.

(2) If the commission determines that an entity described in paragraph (1) is not a "district" or "special district," any conducting authority proceedings for a change of organization involving the entity shall be conducted pursuant to the principal act authorizing the establishment of that entity.

SEC. 4. Section 56100 of the Government Code is amended to read:

56100. Except as otherwise provided in Section 56101, this division provides the sole and exclusive authority and procedure for the initiation, conduct, and completion of changes of organization and reorganization for cities and districts. On and after January 1, 1986, all changes of organization and reorganizations shall be initiated, conducted, and completed in accordance with, and as provided in, this division.

SEC. 5. Section 56115 of the Government Code is repealed.

SEC. 6. Section 56375 of the Government Code is amended to read:

56375. The commission shall have all of the following powers and duties subject to any limitations upon its jurisdiction set forth in this part:

(a) To review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization. However, a commission shall not have the power to disapprove an annexation to a city, initiated by resolution, of contiguous territory which the commission finds is either:

(1) Surrounded or substantially surrounded by the city to which the annexation is proposed or by that city and a county boundary or the Pacific Ocean if the territory to be annexed is substantially developed or developing, is not prime agricultural land as defined in Section 56064, is designated for urban growth by the general plan of the annexing city, and is not within the sphere of influence of another city.

(2) Located within an urban service area which has been delineated and adopted by a commission, which is not prime agricultural land, as defined by Section 56064, and is designated for urban growth by the general plan of the annexing city.

As a condition to the annexation of an area, which is surrounded, or substantially surrounded, by the city to which the annexation is proposed, the commission may require, where consistent with the purposes of this division, that the annexation include the entire island of surrounded, or substantially surrounded, territory.

A commission shall not impose any conditions which would directly regulate land use density or intensity, property development, or subdivision requirements. When the development purposes are not made known to the annexing city, the annexation shall be reviewed on the basis of the adopted plans and policies of the annexing city or county. This paragraph does not prohibit a commission from requiring, as a condition to annexation, that a city prezone the territory to be annexed. However, the commission shall not specify how, or in what manner, the territory shall be prezoned.

(b) With regard to a proposal for annexation or detachment of territory to, or from, a city or district or with regard to a proposal for reorganization which includes annexation or detachment, to determine whether territory proposed for annexation or detachment, as described in its resolution approving the annexation, detachment, or reorganization, is inhabited or uninhabited.

(c) With regard to a proposal for consolidation of two or more cities or districts, to determine which city or district shall be the consolidated, successor city or district.

(d) To approve the annexation to a city after notice and hearing, and authorize the conducting authority to order annexation of the territory without an election, if the commission finds that the territory contained in an annexation proposal meets all of the following requirements:

(1) It does not exceed 75 acres in area, that area constitutes the entire island, and the island does not constitute a part of an unincorporated area which is more than 100 acres in area.

(2) It is surrounded in either of the following ways:

(A) Surrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean.

(B) Surrounded by the city to which annexation is proposed and adjacent cities.

(3) It is substantially developed or developing. The finding required by this subparagraph shall be based upon one or more factors, including, but not limited to, any of the following factors:

(A) The availability of public utility services.

(B) The presence of public improvements.

(C) The presence of physical improvements upon the parcel or parcels within the area.

(4) It is not prime agricultural land, as defined by Section 56064.

(5) It will benefit from the annexation or is receiving benefits from the annexing city.

(e) To approve the annexation of unincorporated, noncontiguous territory, subject to the limitations of Section 56111, located in the same county as that in which the city is located, and which is owned by a city and used for municipal purposes and to authorize the conducting authority to annex the territory without notice and hearing.

(f) Subject to Section 56029, to designate in the resolution making

determinations the conducting authority for proceedings.

(g) When a change of organization or a reorganization includes the annexation of inhabited territory to a city and the assessed value of land within the territory equals one-half or more of the assessed value of land within the city, or the number of registered voters residing within the territory equals one-half or more of the number of registered voters residing within the city, to determine as a condition of the proposal that the change of organization or reorganization shall also be subject to confirmation by the voters in an election to be called, held, and conducted within the territory of the city to which annexation is proposed.

(h) With respect to the incorporation of a new city or the formation of a new special district, to determine the number of registered voters residing within the proposed city or special district.

(i) To adopt procedures for the evaluation of proposals. The commission may adopt standards for any of the factors enumerated in Section 56841.

(j) To adopt standards and procedures for the evaluation of service plans submitted pursuant to Section 56653.

(k) To make and enforce regulations for the orderly and fair conduct of hearings by the commission.

(*l*) To incur usual and necessary expenses for the accomplishment of its functions.

(m) To appoint and assign staff personnel and to employ or contract for professional or consulting services to carry out and effect the functions of the commission.

(n) To review the boundaries of the territory involved in any proposal with respect to the definiteness and certainty of those boundaries, the nonconformance of proposed boundaries with lines of assessment or ownership, and other similar matters affecting the proposed boundaries.

(o) To waive the restrictions of Section 56109 if it finds that the application of the restrictions would be detrimental to the orderly development of the community and that the area that would be enclosed by the annexation or incorporation is so located that it cannot reasonably be annexed to another city or incorporated as a new city.

(p) To waive the application of Section 25210.90 if it finds the application would deprive an area of a service needed to ensure the health, safety, or welfare of the residents of the area and if it finds that the waiver would not affect the ability of a city to provide any service. However, within 60 days of the inclusion of the territory within the city, the legislative body may adopt a resolution nullifying the waiver.

(q) If the proposal includes the incorporation of a city, as defined in Section 56043, or the formation of a district, as defined in Section 2215 of the Revenue and Taxation Code, the commission shall determine the property tax revenue to be exchanged by the affected local agencies pursuant to Section 56842.

SEC. 7. Section 56835 of the Government Code is amended to read:

56835. The executive officer shall also give mailed notice of any hearing by the commission, as provided in Sections 56155 to 56157, inclusive, by mailing notice of the hearing to all of the following persons and entities:

(a) To each affected local agency.

(b) To the chief petitioners, if any.

(c) To each person who has filed a written request for special notice with the executive officer.

(d) If the proposal is for any annexation or detachment, or for a reorganization providing for the formation of a new district, to each city within three miles of the exterior boundaries of the territory proposed to be annexed, detached, or formed into a new district.

(e) If the proposal is to incorporate a new city or for the formation of a district, to the affected county.

(f) If the proposal includes the annexation of territory to a fire protection district formed pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of Division 12 of the Health and Safety Code, and all or part of the affected territory has been classified as a state responsibility area, to the Director of Forestry and Fire Protection.

SEC. 7.5. Section 56848 of the Government Code is repealed.

SEC. 8. Section 56848.3 is added to the Government Code, to read:

56848.3. (a) This section shall apply to any proposal which contains the annexation of territory to a fire protection district which is organized pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of Division 12 of the Health and Safety Code, and the affected territory is or is proposed to be all or part of a city which is within the fire protection district.

(b) Prior to the adoption by the local agency formation commission of a resolution making determinations, the district may request and the commission shall impose, as a term and condition, a requirement that the legislative body of the city shall enter into a contract with the district. The contract shall require:

(1) That the affected territory shall remain part of the district for a period of at least 10 years.

(2) That the city shall pay the cost of services provided by the district. This payment shall be in amounts and on terms specified in the contract.

(3) Any other conditions to which the city and the district mutually agree.

SEC. 9. Section 61623.4 of the Government Code is amended to read:

61623.4. A district may exercise any of the powers, functions, and duties which are vested in, or imposed upon, a fire protection district pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of Division 12 of the Health and

Safety Code if the petition for formation of the district included fire protection among the designated purposes for which it was formed, or if the district adopts fire protection as an additional purpose of the district pursuant to Section 61601.

If the district includes any part of a city, fire protection district, or other local agency which provides fire protection service to any territory in the district, the district shall have no authority pursuant to this section regarding the prevention and suppression of fires in such territories, unless such district has obtained the consent of such city, fire protection district, or other local agency.

SEC. 10. Part 2.7 (commencing with Section 13801) of Division 12 of the Health and Safety Code is repealed.

SEC. 11. Part 3 (commencing with Section 13800) is added to Division 12 of the Health and Safety Code, to read:

PART 3. FIRE PROTECTION DISTRICT LAW OF 1987

CHAPTER 1. GENERAL PROVISIONS

13800. This part shall be known and may be cited as the Fire Protection District Law of 1987.

13801. The Legislature finds and declares that the local provision of fire protection services, rescue services, emergency medical services, hazardous material emergency response services, ambulance services, and other services relating to the protection of lives and property is critical to the public peace, health, and safety of the state. Among the ways that local communities have provided for those services has been the creation of fire protection districts. Local control over the types, levels, and availability of these services is a long-standing tradition in California which the Legislature intends to retain. Recognizing that the state's communities have diverse needs and resources, it is the intent of the Legislature in enacting this part to provide a broad statutory authority for local officials. The Legislature encourages local communities and their officials to adapt the powers and procedures in this part to meet their own circumstances and responsibilities.

13802. As used in this part:

(a) "City" means any city whether general law or charter, including a city and county, and including any city the name of which includes the word "town."

(b) "Day" means a calendar day.

(c) "District" means a fire protection district created pursuant to this part or created pursuant to any law which this part supersedes.

(d) "District board," means the board of directors of a district.

(e) "Employee" means any personnel of a district, including any regular or call firefighter hired and paid on a full-time or part-time basis, or any volunteer firefighter. "Employee" also includes any person who assists in the provision of any authorized emergency duty or service at the request of a person who has been authorized by the

district board to request this assistance from other persons.

(f) "Principal county" means the county having all or the greater portion of the entire assessed value, as shown on the last equalized assessment roll of the county or counties, of all taxable property within a district.

(g) "Zone" means a service zone formed pursuant to Chapter 10 (commencing with Section 13950).

13803. (a) This part provides the authority for the organization and powers of fire protection districts. This part succeeds the Fire Protection District Law of 1961 and all of its statutory predecessors. Any fire protection district organized or reorganized pursuant to the Fire Protection District Law of 1961 or any of its statutory predecessors which was in existence on January 1, 1988, shall remain in existence as if it had been organized pursuant to this part, except that when the district board is a county board of supervisors the number and method of selection of its board of directors shall continue to be governed by the provisions of Chapter 4 (commencing with Section 13831) of the Fire Protection District Law of 1961 in effect on December 31, 1987, as if that chapter had not been repealed. Any special fire protection zone formed pursuant to Chapter 12 (commencing with Section 13991) of the Fire Protection District Law of 1961 or any of its statutory predecessors which was in existence on January 1, 1988, shall remain in existence as a service zone as if it has been formed pursuant to Chapter 10 (commencing with Section 13950).

(b) This part does not apply to any reorganization which was filed pursuant to the Fire Protection District Law of 1961 and which is pending on January 1, 1988. Those pending reorganizations may be continued and completed under, and in accordance with, the Fire Protection District Law of 1961. The repeals, amendments, and additions made by the act enacting this part shall not apply to any of those pending reorganizations, and the laws existing prior to January 1, 1988, shall continue in full force and effect as applied to those pending reorganizations.

13804. This part is necessary for the public health, safety, and welfare, and shall be liberally construed to effectuate its purposes.

13805. If any provision of this part or the application of any provision of this part in any circumstance or to any person, city, county, district, the state, or any agency or subdivision of the state is held invalid, that invalidity shall not affect other provisions or applications of this part which can be given effect without the invalid provision or application of the invalid provision, and to this end the provisions of this part are severable.

13806. Any action to determine the validity of the organization or of any action of a district shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

CHAPTER 2. AREA

13810. Any territory, whether incorporated or unincorporated, whether contiguous or noncontiguous, may be included in a district.

13811. Territory which has been classified as a state responsibility area may be included in a district, except for commercial forest lands which are timbered lands declared to be in a state responsibility area. The executive officer of the local agency formation commission shall give mailed notice of the commission's hearing on any proposal to include state responsibility area in a district, whether by annexation or formation, to the Director of Forestry and Fire Protection. The commission may approve the proposal. Upon inclusion of a state responsibility area in a district, whether by formation or annexation, the state shall retain its responsibility for fire suppression and prevention on timbered, brush, and grass-covered lands. The district may provide the same services in the state responsibility area as it provides in other areas of the district.

13812. The Cortese-Knox Local Government Reorganization Act, Division 3 (commencing with Section 56000) of Title 5 of the Government Code shall govern any change of organization or reorganization of a district.

CHAPTER 3. FORMATION

Article 1. Initiation

13815. A new district may be formed pursuant to this chapter. A district formed or proposed to be formed pursuant to this chapter is not subject to the District Investigation Act of 1933, Chapter 2 (commencing with Section 58500) of Division 2 of Title 6 of the Government Code.

13816. A proposal to form a new district may be made by petition which shall do all of the following:

(a) State that the proposal is made pursuant to this article.

(b) Set forth a description of the boundaries of the territory to be included in the district.

(c) Set forth the methods by which the district will be financed.

(d) State the reasons for forming the district.

(e) Propose a name for the district.

(f) Designate no more than three persons as chief petitioners, setting forth their names and mailing addresses.

(g) State whether the formation is consistent with the sphere of influence of any affected city or affected district.

(h) Specify the number of members of the initial board of directors and the method of their selection, as provided by Article 3 (commencing with Section 13834).

(i) Request that proceedings be taken for the formation pursuant to this chapter.

13817. (a) Before circulating any petition, the chief petitioners

shall publish a notice of intention which shall include a written statement not to exceed 500 words in length, setting forth the reasons for forming the district. The notice shall be published pursuant to Section 6061 of the Government Code in one or more newspapers of general circulation within the territory proposed to be included in the district. If the territory proposed to be included in the district is located in more than one county, publication of the notice shall be made in at least one newspaper of general circulation in each of the counties.

(b) The notice shall be signed by at least one, but not more than three, chief petitioners and shall be in substantially the following form:

"Notice of Intent to Circulate Petition

Notice is hereby given of the intention to circulate a petition proposing to form the _____ (name of the district). The reasons for the proposal are: _____."

(c) Within five days after the date of publication, the chief petitioners shall file with the executive officer of the local agency formation commission of the principal county a copy of the notice together with an affidavit made by a representative of the newspaper in which the notice was published certifying to the fact of publication.

(d) After the filing required pursuant to subdivision (c), the petition may be circulated for signatures.

13818. The petition shall be signed by not less than 25 percent of the registered voters residing in the area to be included in the district, as determined by the local agency formation commission pursuant to subdivision (h) of Section 56375 of the Government Code. The provisions of Sections 41 and 44 of the Elections Code shall govern the signing of the petition and the format of the petition.

13819. A petition may consist of a single instrument or separate counterparts. The chief petitioner or petitioners shall file the petition, including all counterparts, with the executive officer of the local agency formation commission of the principal county. The executive officer shall not accept a petition for filing unless the signatures have been secured within six months of the date on which the first signature was obtained and the chief petitioner or petitioners submitted the petition to the executive officer for filing within 60 days after the last signature was obtained.

13820. (a) Within 30 days after the date of filing a petition, the executive officer of the local agency formation commission shall cause the petition to be examined and shall prepare a certificate of sufficiency indicating whether the petition is signed by the requisite number of signers.

(b) The executive officer shall cause the names of the signers on

the petition to be compared with the voters' register in the office of the county clerk or registrar of voters and ascertain (i) the number of registered voters in the territory to be included in the district, and (ii) the number of qualified signers appearing upon the petition.

(c) If the certificate of the executive officer shows the petition to be insufficient, the executive officer shall immediately give notice by certified mail of the insufficiency to the chief petitioners. That mailed notice shall state in what amount the petition is insufficient. Within 15 days after the date of the notice of insufficiency, the chief petitioners may file with the executive officer a supplemental petition bearing additional signatures.

(d) Within 10 days after the date of filing a supplemental petition, the executive officer shall examine the supplemental petition and certify in writing the results of his or her examination.

(e) The executive officer shall sign and date a certificate of sufficiency. That certificate shall also state the minimum signature requirements for a sufficient petition and show the results of the executive officer's examination. The executive officer shall mail a copy of the certificate of sufficiency to the chief petitioners.

13821. (a) A proposal to form a new district may also be made by the adoption of a resolution of application by the legislative body of any county or city which contains territory proposed to be included in the district. Except for the provisions regarding signers and signatures, a resolution of application shall contain all of the matters specified for a petition in Section 13816. Before submitting a resolution of application, the legislative body shall conduct a public hearing on the resolution.

(b) Notice of the hearing shall be published pursuant to Section 6061 of the Government Code in one or more newspapers of general circulation within the county or city.

(c) At the hearing, the legislative body shall give any person an opportunity to present his or her views on the resolution.

(d) The clerk of the legislative body shall file a certified copy of the resolution of application with the executive officer of the local agency formation commission of the principal county.

13822. Once the chief petitioners have filed a sufficient petition or a legislative body has filed a resolution or application, the local agency formation commission shall proceed pursuant to Chapter 5 (commencing with Section 56825) of Part 3 of Division 3 of Title 5 of the Government Code.

Article 2. Election

13823. (a) If the local agency formation commission approves the formation of a district, with or without amendment, wholly, partially, or conditionally, the board of supervisors shall call and give notice of the election to be held in the proposed district. If the proposed district lies in more than one county, the board of supervisors shall call and give notice of the election to be held in the

territory of the proposed district which lies in that county.

(b) The election shall be held on the next regular election date not less than 113 nor more than 150 days after the date the board of supervisors calls and gives notice of the election.

(c) Notice of the election shall be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation circulated within the territory of the proposed district which lies in the county.

13824. Within five days after the district formation election has been called, the board of supervisors which has called the election shall transmit by registered mail a written notification of the election call to the executive officer of the local agency formation commission of the principal county. The written notice shall include the name and a description of the proposed district and may be in the form of a certified copy of the resolution adopted by the board of supervisors calling the district formation election.

The executive officer of the local agency formation commission shall submit an impartial analysis of the proposed district formation to the officials in charge of conducting the district formation election, pursuant to Section 56859 of the Government Code.

13825. (a) The chief petitioners or the agency filing the resolution or any member or members of the board of supervisors authorized by the board, or any individual voter or bona fide association of citizens entitled to vote on the district formation proposition, or any combination of such voters and associations of citizens, may file a written argument for or a written argument against the proposed district formation.

Arguments shall not exceed 300 words in length. Based on the time reasonably necessary to prepare and print the text of the proposition, analysis, arguments, and sample ballots and to permit the 10-day public examination period as provided in Section 3795 of the Elections Code for the particular election, the election officials shall fix and determine a reasonable date prior to the election after which no arguments for or against the measure may be submitted for printing and distribution to the voters pursuant to Section 13826. Notice of the date fixed shall be published by the elections officials pursuant to Section 6061 of the Government Code. Arguments may be changed until and including the date fixed by the election officials.

(b) If more than one argument for or more than one argument against the proposed district formation is filed with the election officials within the time prescribed, the election officials shall select one of the arguments for printing and distribution to the voters.

In selecting the arguments, the election officials shall give preference and priority in the order named to the arguments of the following:

(1) Chief petitioners or the agency filing the resolution.

(2) The board of supervisors or any member or members of the board authorized by the board.

(3) Individual voters or bona fide associations of citizens or a combination of such voters and associations.

13826. The officials in charge of conducting the election shall cause a ballot pamphlet concerning the district formation proposition to be voted on to be printed and mailed to each voter entitled to vote on the district formation question. The provisions of Section 3795 of the Elections Code shall apply to the materials required to be contained in the ballot pamphlet.

The ballot pamphlet shall contain the following in the order prescribed:

(a) The complete text of the proposition.

(b) The impartial analysis of the proposition submitted by the executive officer of the local agency formation commission.

(c) The argument for the proposed district formation.

(d) The argument against the proposed district formation.

The election officials shall mail a ballot pamphlet to each voter entitled to vote in the district formation election at least 10 days prior to the date of the election. The ballot pamphlet is "official matter" within the meaning of Section 10010 of the Elections Code.

13827. The notice of election shall contain all of the following:

(a) The date of the election.

(b) The name of the proposed district.

(c) The purposes for which the district is to be formed.

(d) A statement that the first directors will be elected at that election who will take office or will be appointed as the case may be, if the district is formed.

(e) A description of the boundaries of the proposed district.

13828. (a) The formation election and the election of members of the district board, if any, shall be held and conducted in accordance with the Uniform District Election Law, Part 3 (commencing with Section 23500) of Division 14 of the Elections Code.

(b) If less than a majority of the votes cast at the election is in favor of forming the district the board of supervisors shall declare the proceedings terminated.

13829. If the majority of the votes cast at the election is in favor of forming the district the board or boards of supervisors shall by resolution entered on its minutes declare the district duly organized under the Fire Protection District Law, giving the name of the district, and the purposes for which it is formed, and describing its boundaries. If the district lies in more than one county, the county clerk of the principal county shall transmit a certified copy of the resolution to the county clerk of each of the other counties in which the district lies.

13830. If the district lies in one county, immediately after entering the resolution in the board minutes pursuant to Section 13829, the county clerk shall cause to be recorded in the office of the county recorder of the county for which he or she is county clerk and file with the Secretary of State a certified copy of the resolution

forming the district. Thereupon the organization of the district shall be complete.

13831. (a) No informality in any proceeding, including informality in the conduct of any election not substantially affecting adversely the legal rights of any person, shall invalidate the formation of any district.

(b) The validity of the formation and organization of a district shall not be contested in any proceeding commenced more than 60 days after the date that the formation of the district is complete.

Article 3. Selection of the Initial Board of Directors

13834. The initial board of directors of a district formed on or after January 1, 1988, shall be determined pursuant to this article.

13835. In the case of a district which contains only unincorporated territory in a single county, the district board may be elected or may be appointed by the county board of supervisors which may appoint itself as the district board.

13836. In the case of a district which contains only unincorporated territory in more than one county, the district board may be elected or may be appointed by the boards of supervisors of the counties in which the district is located. If the district board is appointed by the boards of supervisors, they shall appoint directors according to the proportionate share of population of that portion of each county within the district, provided that each board of supervisors shall appoint at least one director.

13837. In the case of a district which contains unincorporated territory and the territory of one or more cities:

(a) The district board may be elected or appointed by the county board of supervisors and the city councils in which the district is located. If the district board is to be appointed, the board of supervisors and the city council or councils shall appoint directors according to the proportionate share of population that portion of the county and each city within the district, provided that the board of superviors and each city council shall appoint at least one director. The board of supervisors or city council may appoint one or more of its own members to the district board. In no case shall the number of directors exceed 11 members.

(b) Notwithstanding subdivision (a), the county board of supervisors may appoint itself as the district board, if the city council of each of the cities consents by resolution.

13838. In the case of a district which includes only incorporated territory within a single city, the district board may be elected or appointed by the city council which may appoint itself as the district board.

13839. In the case of a district which includes only incorporated territory in more than one city, the district board may be elected or appointed by the city councils in which the district is located. If the district board is appointed, the city councils shall appoint directors

according to the proportionate share of population of that portion of each city within the district, provided that each city council shall appoint at least one director. The city council may appoint one or more of its own members to the district board. In no case shall the directors exceed the number permitted pursuant to Section 13842.

CHAPTER 4. EXISTING BOARD OF DIRECTORS AND OFFICERS

13840. Every district shall be governed by a legislative body known as a board of directors.

13841. Except in the case where a county board of supervisors has appointed itself as the district board, each member of a district board and each member of a fire commission appointed pursuant to Section 13844 shall be a resident of the district. In the case of a district board which is elected by divisions, each director shall be a resident of the division from which he or she is elected.

13842. Except in the case where a county board of supervisors or a city council has appointed itself as the district board, a district board may have three, five, seven, nine, or eleven members.

13843. (a) The term of office of each member of a district board is four years or until his or her successor qualifies and takes office, except as provided in subdivision (b).

(b) In the case of a district formed on or after January 1, 1988, the directors shall serve terms as provided in the Uniform District Election Law, Part 3 (commencing with Section 23500) of Division 14 of the Elections Code.

13844. If a county board of supervisors or a city council has appointed itself as the district board, the board of supervisors or city council may delegate any or all of its powers to a fire commission composed of five or seven commissioners. The board of supervisors or city council shall determine whether the commissioners shall serve at its pleasure or for staggered terms of four years subject to removal for cause.

13845. (a) Except in the case where a county board of supervisors or a city council has appointed itself as the district board, the number of members of a district board may be increased or decreased if a majority of the voters voting on the question are in favor of the question at a general district or special election. The question shall specify the resulting number of members of the district board.

(b) The district board may adopt a resolution placing the question on the ballot. Alternatively, upon receipt of a petition signed by at least 25 percent of the registered voters of the district, the district board shall adopt a resolution placing the question on the ballot.

(c) If the question is submitted to the voters at a general district election, the notice required by Section 23511 of the Elections Code shall contain a statement of the question to appear on the ballot. If the question is submitted to the voters at a special election, the notice of election and the ballot shall contain a statement of the question.

(d) If the voters approve of increasing the number of directors, the new members shall be elected or appointed pursuant to this chapter. If the district board is elected, the additional members may be elected at the same election.

(e) If the voters approve of decreasing the number of directors, the members of the district board continue to serve until the end of their current terms.

(f) The number of members of a district board may be changed by the local agency formation commission as a term and condition of approval by the commission of any change of organization. Unless the Cortese-Knox Local Government Reorganization Act of 1985, Division 3 (commencing with Section 56000) of Title 5 of the Government Code, otherwise requires voter approval, the change ordered by the commission does not require approval by the voters of the district.

13846. (a) In the case of an elected district board, the directors may be elected by divisions if a majority of the voters voting upon the question are in favor of the question at a general district or special election. Conversely, in the case of a district which has an elected district board which is elected by election division, the directors may be elected at large if a majority of the voters voting upon the question are in favor of the question at a general district or special election.

(b) As used in this section, " election by division" means the election of each member of the district board by voters of only the respective election division.

(c) The district board may adopt a resolution placing the question on the ballot. Alternatively, upon receipt of a petition signed by at least 25 percent of the registered voters of the district, the district board shall adopt a resolution placing the question on the ballot.

(d) If the question is submitted to the voters at a general district election, the notice required by Section 23511 of the Elections Code shall contain a statement of the question to appear on the ballot. If the question is submitted to the voters at a special election, the notice of election and ballot shall contain a statement of the question.

(e) If the majority of voters voting upon the question approves the election of directors by divisions, the district board shall promptly adopt a resolution dividing the district into as many divisions as there are directors. The resolution shall assign a number to each division. Using the last decennial census as a basis, the divisions shall be as nearly equal in population as possible. In establishing the boundaries of the divisions the district board may give consideration to the following factors: (i) topography, (ii) geography, (iii) cohesiveness, contiguity, integrity, and compactness of territory, and (iv) community of interests of the divisions.

(f) If the majority of voters voting upon the question approves the election of directors by division, the board members shall be elected by election divisions and each member elected shall be a resident of the election division from which he or she is elected. At the district

general election following the approval by the voters of the election of directors by divisions, the district board shall assign vacancies on the board created by the expiration of terms to the respective election divisions and the vacancies shall be filled from those election divisions.

(g) If the majority of voters voting upon the question approves the election of directors at large, the district board shall properly adopt a resolution dissolving the election divisions which had existed.

13847. In the case of a district board elected by election divisions, the district board shall adjust the boundaries of the election divisions before November 1 of the year following the year in which each decennial federal census is taken. If at any time between each decennial federal census a change of organization alters the population of the district or the district increases or decreases the number of members of the district board, the district board shall reexamine the boundaries of its election divisions. If the district board finds that the population of any election division has varied so that the divisions no longer meet the criteria specified in subdivision (d) of Section 13846, the district board shall adjust the boundaries of the election divisions so that the divisions shall be as nearly equal in population as possible. The district board shall make this change within 60 days of the effective date of the change of organization or an increase or decrease in the number of members of the district board.

13848. (a) If a majority of the voters voting upon the question at a general district or special election are in favor, a district which has an appointed district board shall have an elected district board or a district which has an elected district board shall have an appointed district board.

(b) The district board may adopt a resolution placing the question on the ballot. Alternatively, upon receipt of a petition signed by at least 25 percent of the registered voters of the district, the district board shall adopt a resolution placing the question on the ballot.

(c) If the question is submitted to the voters at a general district election, the notice required by Section 23511 of the Elections Code shall contain a statement of the question to appear on the ballot. If the question is submitted to the voters at a special election, the notice of election and ballot shall contain a statement of the question.

(d) If a majority of voters voting upon the question approves of changing from an appointed district board to an elected district board, the members of the district board shall be elected at the next general district election. If a majority of voters voting upon the question approves of changing from an elected district board to an appointed district board, members shall be appointed to the district board as vacancies occur.

13849. (a) Before circulating any petition pursuant to Section 13845, 13846, or 13848 the chief petitioners shall publish a notice of intention which shall include a written statement not to exceed 500 words in length, setting forth the reasons for the proposal. The notice

shall be published pursuant to Section 6061 of the Government Code in one or more newspapers of general circulation within the district. If the district is located in more than one county, publication of the notice shall be made in at least one newspaper of general circulation in each of the counties.

(b) The notice shall be signed by at least one, but not more than three, chief petitioners and shall be in substantially the following form:

"Notice of Intent to Circulate Petition

Notice is hereby given of the intention to circulate a petition affecting the Board of Directors of the _____ (name of the district). The petition proposes that _____ (description of the proposal)."

(c) Within five days after the date of publication, the chief petitioners shall file with the secretary of the district board a copy of the notice together with an affidavit made by a representative of the newspaper in which the notice was published certifying to the fact of publication.

(d) After the filing required pursuant to subdivision (c), the petition may be circulated for signatures.

13850. (a) The provisions of Sections 41 and 44 of the Elections Code shall govern the signing of the petition and the format of the petition.

(b) A petition may consist of a single instrument or separate counterparts. The chief petitioner or petitioners shall file the petition, together with all counterparts, with the secretary of the district board. The secretary shall not accept a petition for filing unless the signatures have been secured within six months of the date on which the first signature was obtained and the chief petitioner or petitioners submitted the petition to the secretary for filing within 60 days after the last signature was obtained.

13851. (a) Within 30 days after the date of filing a petition, the secretary of the district board shall cause the petition to be examined and shall prepare a certificate of sufficiency indicating whether the petition is signed by the requisite number of signers.

(b) The secretary shall cause the names of the signers on the petition to be compared with the voters' register in the office of the county clerk or registrar of voters and ascertain (i) the number of registered voters in the district, and (ii) the number of qualified signers appearing upon the petition.

(c) If the certificate of the secretary shows the petition to be insufficient, the secretary shall immediately give notice by certified mail of the insufficiency to the chief petitioners. That mailed notice shall state in what amount the petition is insufficient. Within 15 days after the date of the notice of insufficiency, the chief petitioners may file with the secretary a supplemental petition bearing additional

signatures.

(d) Within 10 days after the date of filing a supplemental petition, the secretary shall examine the supplemental petition and certify in writing the results of his or her examination.

(e) The secretary shall sign and date a certificate of sufficiency. That certificate shall also state the minimum signature requirements for a sufficient petition and show the results of the secretary's examination. The secretary shall mail a copy of the certificate of sufficiency to the chief petitioners.

(f) Once the chief petitioners have filed a sufficient petition, the district board shall take the actions required pursuant to Section 13845, 13846, or 13848.

13852. (a) Any vacancy in the office of a member appointed to the district board shall be filled pursuant to Section 1779 of the Government Code.

(b) Any vacancy in the office of a member elected to the district board shall be filled pursuant to Section 1780 of the Government Code.

13853. (a) Within 60 days after their initial election or appointment and after each general district election or unopposed election, the district board shall meet and elect its officers. The officers of a district board are a president, a vice president, and a secretary or clerk.

(b) The secretary or clerk may be a member of the district board. He or she may receive compensation set by the district board which shall be in lieu of any other compensation to which he or she may be entitled as a member of the district board. The district board may employ a clerk to perform the duties of the secretary.

(c) A district board may create additional officers and elect members to those positions, provided that no member of a district board shall hold more than one office.

13854. (a) Except as provided in subdivision (b), the county treasurer of the principal county shall act as the district treasurer and shall receive no compensation for the receipt and disbursement of money of the district.

(b) The district board may adopt a resolution appointing a district treasurer other than the county treasurer and defining the duties and compensation of the office. The district treasurer, or any other person authorized by the district board, shall draw checks or warrants to pay any demands which have been audited and approved in the manner prescribed by the district board.

(c) If the district board adopts the resolution provided by subdivision (b), the district treasurer and any other person designated by the district board shall give bonds to the district conditioned for the faithful performance of their duties. The amount of each bond shall be at least one hundred thousand dollars ($100,000) or 10 percent of the total amount of the district's final budget for the preceding fiscal year, whichever is greater. The district board shall pay the premiums on the bonds.

13855. A district board shall meet at least once every three months. Meetings of the board are subject to the provisions of the Ralph M. Brown Act, (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

13856. (a) A majority of the district board shall constitute a quorum for the transaction of business.

(b) The district board shall act only by ordinance, resolution, or motion. Except as specifically provided to the contrary in this part, a recorded vote by a majority of the total membership of the district board is required on each action.

13857. Each member of the district board may receive compensation in an amount set by the district board not to exceed seventy-five dollars ($75) for attending each meeting of the district board. The number of meetings for which a member of the board of directors may receive compensation shall not exceed four meetings in any calendar month.

CHAPTER 5. GENERAL POWERS AND DUTIES

13860. A district has perpetual succession.

13861. A district shall have and may exercise all rights and powers, expressed or implied, necessary to carry out the purposes and intent of this part, including, but not limited to, the following powers:

(a) To sue and be sued.

(b) To acquire any property within the district by any means, to hold, manage, occupy, dispose of, convey and encumber the property, and to create a leasehold interest in the property for the benefit of the district.

(c) To acquire by eminent domain any property necessary to carry out any of its powers or functions.

(d) To appoint necessary employees, to define their qualifications and duties, and to provide a pay schedule for performance of their duties.

(e) To employ counsel.

(f) To enter into and perform all necessary contracts pursuant to Article 53 (commencing with Section 20810) of Part 3 of Division 2 of the Public Contract Code.

(g) To adopt a seal and alter it at pleasure.

(h) To adopt ordinances following the procedures of Article 7 (commencing with Section 25120) of Chapter 1 of Part 2 of Division 2 of Title 3 of the Government Code.

(i) To establish and enforce rules and regulations for the administration, operation, and maintenance of the services listed in Section 13862.

(j) To enter joint powers agreements pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

(k) To provide insurance pursuant to Part 6 (commencing with

Section 989) of Division 3.6 of Title 1 of the Government Code.

13862. A district shall have the power to provide the following services:

(a) Fire protection services.

(b) Rescue services.

(c) Emergency medical services.

(d) Hazardous material emergency response services.

(e) Ambulance services, pursuant to Division 2.5 (commencing with Section 1797).

(f) Any other services relating to the protection of lives and property.

13863. (a) A district may enter into mutual aid agreements with any federal or state agency, any city, county, city and county, or special district.

(b) A district may also enter into mutual aid agreements with any private firm or corporation which maintains a full-time fire department. The firm or corporation, or any of its employees, shall have the same immunity from liability for civil damages on account of personal injury to or death of any person or damage to property resulting from acts or omissions of its fire department personnel in the performance of the provisions of the mutual aid agreement as is provided by law for the district and its employees, except when the act or omission occurs on property under the control of the firm or corporation.

13864. A district may lease or rent any property from an employee, including but not limited to, vehicles or equipment.

13865. A district may join any local, state, or national group or association which promotes the preservation of life and property from the hazards of fire and other disasters.

13866. A district may authorize its directors and employees to attend professional or vocational meetings and pay their actual and necessary traveling and incidental expenses while on official business.

13867. The acquisition of any equipment for fire protection purposes shall conform to the standardization provisions of Article 1 (commencing with Section 13025) of Chapter 2 of Part 1.

13868. (a) A district board shall keep a record of all its acts, including its financial transactions.

(b) Unless another provision of law requires a longer retention period, a district may destroy or otherwise dispose of any paper or document filed with or submitted to the district more than one year previously, unless the district board determines that there is a need for its retention. In determining whether there is a need for retaining a paper or document, consideration shall be given to such factors as future public need, the effect of statutes of limitation, and historical significance.

13869. A district may adopt a fire prevention code by reference pursuant to Article 2 (commencing with Section 50022) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. For that

purpose, the district board shall be deemed a legislative body and the district shall be deemed a local agency.

13870. (a) Notwithstanding any other provision of law, a district board or its authorized representative may issue a written order to correct or eliminate a fire hazard or life hazard.

(b) Any person who has been ordered to immediately correct or eliminate a fire hazard or life hazard pursuant to subdivision (a) and who believes that strict compliance with the order would cause undue hardship may, within 10 days, present a written request to the district board requesting a hearing on and a review of the order. The request shall state the reasons for making the request.

(c) Within 30 days of the receipt of a written request pursuant to subdivision (b), the district board or its authorized representative shall hold a hearing. The board may modify, vacate, or affirm the order.

13871. (a) Any citation issued by a district for violation of a fire prevention code or a district ordinance may be processed pursuant to subdivision (d) of Section 17 of the Penal Code.

(b) Every person who fails or refuses to correct or eliminate a fire or life hazard after written order of a district board or its authorized representative is guilty of a misdemeanor.

(c) Every person who falsely personates a member of a district board or an officer or employee of a district is guilty of a misdemeanor.

(d) Every misdemeanor is punishable pursuant to Section 19 of the Penal Code.

13872. A district may, by ordinance, authorize its fire chief, or his or her duly authorized representative, to issue citations for the misdemeanors specified in Section 13873. The provisions of Chapter 5C (commencing with Section 853.1) of Title 4 of Part 2 of the Penal Code shall apply.

13873. Employees of a district shall have the powers of peace officers while engaged in the prevention and suppression of fires and the protection and preservation of life and property, including, but not limited to, actions associated with rescue services, emergency medical services, hazardous material emergency response services, and ambulance services.

13874. If a district board has adopted regulations for the control of open fires, no person shall burn any material without a permit. A district shall not issue a permit to burn any material which would not be permitted by an air pollution control district or an air quality management district, or any other state or federal agency.

13875. A district may prepare and disseminate information and operate educational programs, including, but not limited to, those which help to prevent fire, eliminate life hazards, and prepare for medical emergencies.

13876. A district board may adopt a resolution to change the name of the district. The resolution shall comply with the requirements of Chapter 23 (commencing with Section 7530) of

Division 7 of Title 1 of the Government Code. Within 10 days of its adoption, the district board shall file a copy of the resolution with the Secretary of State, and the board of supervisors and the local agency formation commission of each county in which the district is located.

13877. A district board may authorize the use of any vehicle, apparatus, or equipment outside the district, subject to any terms and conditions it prescribes.

13878. A district may contract with any person or public agency to provide district services to territory which is outside the district. A contract shall provide for payment in advance.

13879. A district board may abate hazardous weeds and rubbish pursuant to Part 5 (commencing with Section 14875). For that purpose, the district board shall be deemed to be a "board of supervisors" and district employees shall be deemed to be the "persons" designated by Section 14890.

CHAPTER 6. ELECTIONS

13885. Except as otherwise provided in this part, districts are subject to the provisions of the Uniform District Election Law, Part 3 (commencing with Section 23500) of Division 14 of the Elections Code.

13886. A district board may require that its election of district board members be held on the same day as the statewide general election pursuant to Section 23302.1 of the Elections Code.

13887. The expense of an election on the question of the formation of a district shall be paid by the county if the proposition fails. If the formation is approved, the expense shall be a charge against the district and repaid to the county from the first moneys collected by the district. The expense of all other elections shall be a charge against the district.

CHAPTER 7. FINANCE

13890. On or before June 30 of each year, a district board shall adopt a preliminary budget which shall conform to the Accounting Procedures for Special Districts (commencing with Section 1031.1) of, and the Budgeting Procedures for Special Districts (commencing with Section 1121) of, Title 2 of the California Administrative Code.

13891. On or after July 1 of each year, the amounts set forth in the preliminary budget, except obligations for fixed assets and new permanent employee positions, are deemed appropriated until the district board adopts the final budget. If the district board has not adopted a preliminary budget, the amounts deemed appropriated shall be based on the budget of the preceding year, excluding fixed assets and new permanent employee positions.

13892. If the district board determines that the amount of revenue for the coming fiscal year will be inadequate to meet the amount of expenditures needed to protect life and property, the

preliminary budget shall propose methods of raising adequate revenues or reducing services.

13893. (a) On or before June 30 of each year, a district board shall publish a notice stating all of the following:

(1) That it has adopted a preliminary budget which is available for inspection at a time and place within the district specified in the notice.

(2) The date, time, and place when the board will meet to adopt the final budget and that any person may appear and be heard regarding any item in the budget or regarding the addition of other items.

(b) The notice shall be published pursuant to Section 6066 of the Government Code in at least one newspaper of general circulation in the district. The first publication shall be at least two weeks before the date of the meeting. If there is no newspaper published in the district, the notice shall be posted in three public places in the district at least two weeks before the date of the meeting.

13894. At the time and place specified for the meeting, any person may appear and be heard regarding any item in the budget or regarding the addition of other items. The hearing on the preliminary budget may be continued from time to time.

13895. On or before October 1 of each year, after making any changes in the preliminary budget, the board shall adopt a final budget. The final budget shall establish its appropriation limit pursuant to Division 9 (commencing with Section 7900) of Title 1 of the Government Code. A copy of the final budget shall be forwarded to the auditor of each county in which the district is located.

13896. The auditor of each county in which a district is located shall allocate to the district its share of property tax revenue pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

13897. A district may borrow money and incur indebtedness pursuant to the authority contained in Article 7 (commencing with Section 53820), Article 7.5 (commencing with Section 53840), Article 7.6 (commencing with Section 53850), and Article 7.7 (commencing with Section 53859), of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

13898. A district may accept any revenue, money, grants, goods, or services from any federal, state, regional, or local agency or from any person for any lawful purpose of the district.

13899. All taxes and assessments levied under this chapter shall be computed and entered on the county assessment roll and collected at the same time and in the same manner as other county taxes. When collected, the taxes and assessments shall be paid into the county treasury for the use of the district. Except as provided in Section 13854, the county may deduct its costs for this service pursuant to Section 29142 of the Government Code.

13900. At any regular meeting or properly noticed special meeting, a district board by two-thirds majority vote of the total

membership of the district board may make available for appropriation any of the following:

(a) Balances in appropriations for contingencies, including accretions from cancellations of appropriations.

(b) Designations and reserves no longer required for the purpose for which intended, excluding the general reserve, balance sheet reserves, and reserve for encumbrances.

(c) Amounts which are either in excess of anticipated amounts or not specifically set forth in the budget derived from any or anticipated increases in available financing.

13901. If it finds that an emergency affects the ability of a district to furnish adequate fire protection services, rescue services, emergency medical services, hazardous material emergency response services, ambulance services, or other services relating to the protection of lives and property, a district board, by resolution adopted by a two-thirds vote of the total membership of the district board, may provide the moneys which have been received but not specifically set forth as revenue in the adopted final budget be made available for appropriation and expenditure during the current fiscal year.

13902. (a) A district board may establish a reserve for capital outlays and shall declare the purposes for which the reserve is to be used.

(b) At any time, the district board may transfer to its reserve for capital outlays any unencumbered surplus reserve remaining at the end of a fiscal year.

(c) A capital outlay reserve shall be used only for the purposes specified by the district board. However, if a district board finds at the time it adopts its final budget that the reserve is no longer required, it may, by unanimous vote, discontinue the reserve or transfer any balance to the district's general fund.

13903. (a) All claims for money or damages against a 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.

(b) Claims against a district shall be audited, allowed, and paid by order of the district board.

(c) As an alternative to subdivision (b), a district board may instruct the county auditor to audit, allow, and draw his or her warrant on the county treasurer for all legal claims presented to him or her and authorized by the district board.

(d) The warrants shall be paid in the order in which they are presented.

13904. If a warrant is presented to the district treasurer for payment and the treasurer cannot pay it for want of funds in the account on which it is drawn, the treasurer shall endorse the warrant "NOT PAID BECAUSE OF INSUFFICIENT FUNDS" and sign his or her name and indicate the date and time the warrant was presented. From that time until it is paid, the warrant bears interest

at the maximum rate permitted pursuant to Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code.

13905. Notwithstanding Section 13903, a district board may adopt a resolution ordering the establishment of a petty cash fund to pay small bills directly. The resolution shall designate all of the following:

(a) The maximum amount of the fund, not to exceed five hundred dollars ($500).

(b) The purposes for which the fund may be spent.

(c) The officer or employee who is authorized to spend the fund and who will account for it.

(d) The officer or employee who is authorized to draw a warrant on the district treasury to establish the fund and who is authorized to draw additional warrants to reimburse the fund. Each warrant drawn to reimburse the fund shall contain an itemized account of expenditures.

13906. (a) A district may acquire any necessary property by purchase or purchase on contract with money borrowed pursuant to this section.

(b) The amount of indebtedness to be incurred shall not exceed an amount equal to three times the actual income from property taxes received pursuant to Section 13896 for the fiscal year preceding the year in which the indebtedness is incurred. Any indebtedness shall be repaid within 10 years from the date on which it is incurred. An indebtedness shall bear interest at a rate which shall not exceed the rate permitted under Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code.

(c) An indebtedness shall be authorized by resolution adopted by a two-thirds majority vote of the total membership of the district board.

CHAPTER 8. ALTERNATIVE REVENUES

13910. Whenever the district board determines that the amount of revenue available to the district or any of its zones is inadequate to meet the costs of providing services pursuant to Section 13862, the board may raise revenues pursuant to this chapter or any other provision of law.

13911. A district may levy a special tax pursuant to Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

13912. A district may levy a special tax pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code.

13913. A district may levy a special tax pursuant to Article 16 (commencing with Section 53970) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code. However, the tax shall not

require a higher rate of payment or other measure of tax on the part of new construction than on the part of other real property.

13914. A district may levy an assessment for fire suppression services 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.

13915. A district may levy assessments to finance capital improvements pursuant to the Improvement Act of 1911, Division 7 (commencing with Section 5000), the Improvement Bond Act of 1915, Division 10 (commencing with Section 8500), and the Municipal Improvement Act of 1913, Division 12 (commencing with Section 10000) of the Streets and Highways Code.

13916. (a) A district board may charge a fee to cover the cost of any service which the district provides or the cost of enforcing any regulation for which the fee is charged. No fee shall exceed the costs reasonably borne by the district in providing the service or enforcing the regulation for which the fee is charged. A district board shall not charge a fee on new construction or development for the construction of public improvements or facilities or the acquisition of equipment.

(b) The district board shall adopt an ordinance establishing a schedule of fees. Before either approving an increase in an existing fee or initially imposing a new fee, the district board shall publish notice of its intention to establish a schedule of fees pursuant to Section 6066 of the Government Code. The notice shall state the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by subdivision (d) is available.

(c) The district board shall mail the notice of the meeting at least 14 days before the meeting to any interested party who has filed a written request with the district board for mailed notice of the meeting on new or increased fees. Any written request for mailed notice is valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notice shall be filed on or before April 1 of each year. The district board may establish a reasonable annual charge for sending these notices based on the estimated cost of providing that service.

(d) At least 10 days before the meeting, the district board shall make available to the public, data indicating the amount of cost, or estimated cost, required to provide the service or the cost of enforcing any regulation for which the fee is charged and the revenue sources anticipated to provide the service or the cost of enforcing any regulation, including general fund revenues.

(e) Any costs incurred by a district in conducting the meeting required by this section may be recovered from fees charged for the service or the cost of enforcing any regulation which were the subject of the meeting.

(f) At the meeting, the district board shall hear and consider any objections or protests to the proposed schedule of fees.

13917. A district board may charge residents of the district a fee

authorized pursuant to Section 13916 which is less than the fee which it charges to nonresidents of the district.

13918. Notwithstanding Section 6103 of the Government Code, a district board may charge a fee authorized pursuant to Section 13916 to other public agencies.

13919. A district board may waive payment of a fee authorized pursuant to Section 13916 when it determines that payment would not be in the public interest. Before waiving payment of any fee, a district board shall adopt a resolution which specifies the policies and procedures governing waivers.

CHAPTER 9. GENERAL OBLIGATION BONDS

13925. Whenever a district board determines that it is necessary to incur a general obligation bonded indebtedness for the acquisition or construction of any real property or other capital expense or for funding or refunding of any outstanding indebtedness, the district board shall adopt a resolution making determinations and calling an election on a proposition to incur indebtedness and to issue general obligation bonds.

13926. The resolution shall state:

(a) The purpose for which the proposed debt is to be incurred, which may include expenses for the authorization, issuance, and sale of bonds.

(b) The amount of debt to be incurred.

(c) The maximum term of the bonds, not to exceed 30 years.

(d) The maximum rate of interest to be paid, not to exceed the maximum rate permitted pursuant to Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) The measure to be submitted to the voters.

(f) The date on which the election will be held.

(g) Any other matters which are required pursuant to the Uniform District Election Law, Part 3 (commencing with Section 23500) of Division 14 of the Elections Code.

13927. The election shall be conducted pursuant to the Uniform District Election Law, Part 3 (commencing with Section 23500) of Division 14 of the Elections Code.

13928. If two-thirds of voters voting upon the proposition favor incurring the indebtedness and issuing the bonds, the district board may adopt resolutions to issue bonds for all or any part of the amount of the indebtedness.

13929. The district board may provide for the issuance of bonds in any amounts, in any series, and on any terms, provided that they do not exceed the limits approved by the voters.

13930. The district board shall adopt a resolution prescribing the form and denomination of the bonds and any coupons. The resolution shall specify the dates on which all or any part of the principal shall become due and payable. The payment of the first

installment or principal may be deferred for a maximum period not to exceed five years from the date on which the district board issues the first bonds or first bonds in each series.

13931. The district board may provide for the call and redemption of bonds before their maturity at times and prices and upon any other terms as it specifies. A bond shall not be subject to call or redemption before maturity unless it contains a recital to that effect or unless a statement to that effect is printed on it.

13932. The principal and interest of the bonds shall be payable in lawful money of the United States at the office of the district treasurer or any other place, at the option of the bondholder.

13933. (a) The bonds shall be dated, numbered consecutively, and be signed by the president of the district board and the district treasurer. The district treasurer shall sign any coupons. Any signatures or countersignatures may be mechanically reproduced by any means, except that one of the signatures shall be signed by hand.

(b) If the president of the district board or the district treasurer whose signature appears on a bond or coupon ceases to hold that office before the delivery of the bonds or the coupons to the purchaser, the signature is nevertheless valid and sufficient for any purpose as if the president or treasurer had remained in office until the delivery of the bonds or coupons.

13934. (a) Before selling the bonds or coupons, the district board shall give notice inviting sealed bids. At a minimum, the district board shall publish notice at least once in a newspaper of general circulation in the district at least 10 days before the deadline for receiving the bids.

(b) The district board shall award the sale of the bonds to the highest responsible bidder.

(c) If the district board does not receive any bids or if it determines that the bids received are not satisfactory as to price or responsibility of the bidders, it may reject all bids, if any, and either readvertise or sell the bonds at private sale.

13935. (a) All premiums and accrued interest received from the sale of the bonds shall be deposited with the district treasurer in a special bond service fund to be used for the payment of the principal of and interest on the bonds, and the remainder of the proceeds of the bonds shall be placed to the credit of the proper improvement fund and applied exclusively to the purpose and object recited in the proposition approved by the voters.

(b) When the purpose and object have been accomplished, any moneys remaining in the improvement fund shall be transferred to the special bond service fund. When the purpose and object have been accomplished and all principal and interest on the bonds have been paid, any balance of money then remaining shall be transferred to the general fund of the district.

13936. Any general obligation bonds issued by a district have the same force, value, and use as bonds issued by a city and the bonds and the interest on the bonds are exempt from all taxation within the

State of California.

13937. A district shall not incur a bonded indebtedness in excess of 10 percent of the assessed value of all taxable property within the district.

13938. (a) After incurring a general obligation indebtedness, and annually thereafter until the indebtedness is paid or until there is a sum in the district treasury in a special bond service fund set apart for that purpose sufficient to meet all payments of principal and interest on that indebtedness as it becomes due, the district board shall adopt a resolution directing the county tax collector to levy a tax on behalf of the district.

(b) The tax shall be in addition to all other taxes levied by and for the district and shall be collected in the same manner and at the same time as county taxes. A county may recover its costs as provided by Section 29124 of the Government Code.

(c) The rate of the tax shall be fixed to result in proceeds which are sufficient to pay any principal and interest which will become due before the next proceeds of a tax to be levied will be available.

CHAPTER 10. SERVICE ZONES

13950. (a) Whenever a district board determines that it is in the public interest to provide different services, to provide different levels of service, or to raise additional revenues within specific areas of the district, it may form one or more service zones pursuant to this chapter.

(b) The district board shall initiate proceedings for the formation of a new zone by adopting a resolution which shall do all of the following:

(1) State that the proposal is made pursuant to this chapter.

(2) Set forth a description of the boundaries of the territory to be included in the zone.

(3) State the different services, different levels of service, or additional revenues which the zone will provide.

(4) Set forth the methods by which those services or levels of service will be financed.

(5) State the reasons for forming the zone.

(6) Propose a name or number for the zone.

(7) Fix the date, time, and place for the public hearing on the formation of the zone.

(c) The district board shall publish notice of the hearing, including the information required by subdivision (b), pursuant to Section 6061 of the Government Code in one or more newspapers of general circulation in the district. The district board shall mail the notice to all owners of property within the proposed zone. The district board shall post the notice in at least three public places within the territory of the proposed zone.

(d) At the hearing, the district board shall hear and consider any protests to the formation of the zone. At the conclusion of the

hearing, the district board may adopt a resolution ordering the formation of the zone.

13951. A district board may change the boundaries of a service zone or dissolve a zone by following the procedures in Section 13950.

13952. A local agency formation commission shall have no power or duty to review and approve or disapprove a proposal to create a service zone, a proposal to change the boundaries of a zone, or a proposal to dissolve a zone.

13953. As determined by the district board, a service zone may provide any service at any level within its boundaries which the district may provide.

13954. As determined by the district board and pursuant to the requirements of this part, a service zone may exercise any fiscal powers within its boundaries that the district may exercise.

13955. Any taxes, special taxes, assessments, or fees which are intended solely for the support of services within a zone shall be levied, assessed, and collected only within the boundaries of the zone.

13956. To assist it in the operation of a service zone, the district board may appoint one or more advisory groups composed of persons who reside in or own property in the zone.

CHAPTER 11. EMPLOYEE RELATIONS

13960. (a) The Meyers-Milias-Brown Act, Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code applies to all fire protection districts.

(b) Chapter 4 (commencing with Section 1960) of Part 7 of Division 2 of the Labor Code applies to all fire protection districts.

13961. (a) A district board may adopt an ordinance establishing an employee relations system.

(b) "Employee relations system" as used in this chapter means a civil service system or a merit system.

13962. (a) Upon receipt of a petition proposing an employee relations system for employees of the district signed by at least 10 percent of the registered voters of the district, the district board shall either adopt an ordinance providing for the employee relations system or adopt an ordinance subject to the approval of the voters of the district.

(b) District employees may circulate the petitions described in subdivision (a) at any time when they are not on duty.

(c) If the question is submitted to the voters at a general district election, the notice required by Section 23511 of the Elections Code shall contain a statement of the question to appear on the ballot. If the question is submitted to the voters at a special election, the notice of election and ballot shall contain a statement of the question.

(d) The question placed before the voters shall call for a "Yes" or "No" vote and shall be in substantially the following form:

"Shall the ordinance of the Board of Directors of the _____ (name of the district), adopting an employee relations system for the employees of the district, be approved?"

(e) If a majority of the voters voting on the question approve of the question, the ordinance shall go into effect.

13963. When more than one district is governed by the same board of directors, the district board may do all of the following:

(a) Adopt the same set of employee relations rules, regulations, and procedures for any or all districts.

(b) Authorize one examination for any or all districts for each classification of employment, establish one eligibility list, permit qualified candidates to transfer from one district to another, and allow requested changes in assignment.

(c) Adopt one seniority list to be used in the layoff of all employees of any or all districts. Persons laid off due to lack of work shall be eligible for reemployment and shall be reemployed in preference to the employment of new applicants. The district board may set a time limit on the use of this seniority list.

13964. If a county board of supervisors has appointed itself as the district board, it may change to district status any employee of a county fire warden department and the status of any district employee may be changed to that of a county employee, subject to charter provisions relating to employee relations, and the rules, regulations, and procedures of the employee relations system of the employer county.

13965. If the civil service commission or body performing employee relations functions for a district finds that a person has been employed by a city or another district which has, or any portion of which has, been annexed to, included within, or contracts with, the district for all fire protection, rescue, or emergency medical services, in a position classification the duties of which and qualifications for which are substantially the same as those of any position classification in the district, at the request of the district board, the civil service commission or other body may certify, without examination, that person as eligible to hold that district position classification or any lower position classification for which the person is qualified and which would not result in a lower level of salary than was received by the person immediately before the annexation, inclusion, or contract. If a person is employed by the district after certification without examination by the civil service commission or other body because of his or her employment in a position classification of similar duties by a city or district, all time employed in that city or district shall be considered as time employed by the district, to determine seniority rights and salary rates.

13966. (a) In the case of a district where the Board of Supervisors of the County of Santa Clara has appointed itself as the district board of a district, the district board may call an election to be held in the district for the purpose of submitting to the voters of the district the

question of whether the district board may provide for a system of binding arbitration for the resolution of impasses in employer-employee relations.

(b) Where the district has created service zones, the election specified in subdivision (a) shall be held only in those zones in which the district provides direct fire protection and not in those zones in which fire protection is provided by contract with other agencies.

13967. A district board may require any employee of the district to be bonded. The district shall pay the cost of the bonds.

13968. A district board may provide for any programs for the benefits of its employees or members of the district board, pursuant to Chapter 2 (commencing with Section 53200) of Part 1 of Division 2 of Title 5 of the Government Code.

13969. A district board shall train all employees of the district who are expected to provide services pursuant to Section 13862, except those whose duties are primarily clerical or administrative, to administer first aid and cardiopulmonary resuscitation, as required pursuant to Section 1797.182. A district board may provide any other training programs for its employees.

13970. A fire protection district shall be considered a "fire district" to grant leaves of absence in lieu of temporary disability payments pursuant to Article 7 (commencing with Section 4850) of Chapter 2 of Part 2 of Division 4 of the Labor Code.

SEC. 12. Section 20811 is added to the Public Contract Code, to read:

20811. When a district board determines that it is in the public interest, a district may contract with any other public agency for fire protection services, rescue services, emergency medical services, hazardous material emergency response services, ambulance services, and any other emergency services for the protection of lives and property.

SEC. 13. Section 20812 is added to the Public Contract Code, to read:

20812. (a) A district board may contract for special services. These contracts shall be with persons specially trained, experienced, expert, and competent to perform the special services. The special services shall be in the fields of accounting, administration, ambulance, architecture, custodial, economics, engineering, finance, insurance, labor relations, law, maintenance, mechanics, medicine, planning, science, technology, and other services which are incidental to the operation of the district.

(b) In the case of a district which has a final budget in excess of one million dollars ($1,000,000), the district shall follow the contracting and purchasing procedures which apply to the county government of its principal county or the procedures in subdivision (c).

(c) In the case of a district which has a final budget less than one million dollars ($1,000,000), the district shall follow the procedures of this subdivision.

(1) When the expenditure required for the service contract exceeds ten thousand dollars ($10,000), it shall be contracted for and let to the lowest responsible bidder. If two or more bids are the same and the lowest, the district board may accept the one it chooses.

(2) The notice inviting bids shall set a date for the opening of bids. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids. Notice shall be published at least twice, at least five days apart, in a newspaper of general circulation in the district, or if there is none, it shall be posted in at least three public places in the district. The notice shall distinctly state the service to be performed.

(3) The district board may reject any bids. If the district board rejects all bids, it may either readvertise or adopt a resolution, by two-thirds vote, declaring that the service can be performed more economically by the district's employees or obtained at a lower price in the open market. Upon adoption of the resolution, the district board may undertake the service contract without further complying with this section.

(4) If no bids are received, the district board may undertake the service contract without further complying with this section.

SEC. 14. Section 20813 is added to the Public Contract Code, to read:

20813. (a) All contracts for the construction or completion of any building, structure, or improvement, when the expenditure required for the work exceeds ten thousand dollars ($10,000), shall be contracted for and let to the lowest responsible bidder after notice. If two or more bids are the same and the lowest, the district board may accept the one it chooses.

(b) The notice inviting bids shall set a date for the opening of bids. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids. Notice shall be published at least twice, not less than five days apart, in a newspaper of general circulation in the district, or if there is none, it shall be posted in at least three public places in the district. The notice shall distinctly state the work to be done.

(c) In its discretion, the board may reject any bids presented and readvertise.

(d) In the case of an emergency, the district board may adopt a resolution by a two-thirds vote of all the members of the district board declaring that the public interest and necessity demand immediate expenditure of public money to safeguard life, health, or property. The district board may expend any sum required in the emergency without submitting such expenditure to bid.

(e) The district board may, subject to the provisions of Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code, require the posting of those bonds it deems desirable as a condition to the filing of a bid or the letting of a contract.

(f) Cost records of the work shall be kept in the manner provided

in Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the Government Code.

SEC. 15. Section 5782.22 of the Public Resources Code is amended to read:

5782.22. (a) The district board may exercise any of the powers, functions, and duties which are vested in, or imposed upon, a fire protection district pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of Division 12 of the Health and Safety Code.

(b) If the district includes any part of a local agency which provides fire protection to any territory in the district, the district shall not have any authority regarding the prevention or suppression of fires in that territory unless it obtains the consent of the other local agency.

SEC. 16. Section 16463.5 of the Public Utilities Code is amended to read:

16463.5. (a) A district may exercise any of the powers, functions, and duties which are vested in, or imposed upon, a fire protection district pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of Division 12 of the Health and Safety Code.

(b) If the district includes any part of a local agency which provides fire protection service to any territory in the district, the district shall have no authority regarding the prevention and suppression of fires in that territory, unless the district has obtained the consent of the local agency.

SEC. 17. Article 7 (commencing with Section 31120) of Part 5 of Division 12 of the Water Code is repealed.

SEC. 18. Article 7 (commencing with Section 31120) is added to Part 5 of Division 12 of the Water Code, to read:

Article 7. Fire Protection

31120. (a) A district may exercise any of the powers, functions, and duties which are vested in, or imposed upon, a fire protection district pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of Division 12 of the Health and Safety Code.

(b) If the district includes any part of a local agency which provides fire protection service to any territory in the district, the district shall have no authority regarding the prevention and suppression of fires in that territory unless the district has obtained the consent of the other local agency.

SEC. 19. Section 35412 of the Water Code is amended to read:

35412. The Irish Beach Water District may acquire, construct, and operate facilities for providing fire protection to the district and its inhabitants, including buildings, engines, hose, hose carts, or carriages, and other appliances and supplies for the full equipment of a fire company or department.

The Irish Beach Water District for the purpose of providing fire protection services may exercise any of the powers, functions, and duties which are vested in, or imposed upon, a fire protection district pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of Division 12 of the Health and Safety Code.

If the district includes any part of a city, fire protection district, or other local agency which provides fire protection service to any territory in the district, or if the Department of Forestry and Fire Protection provides fire protection service to any territory in the district, the district shall have no authority pursuant to this section regarding the prevention and suppression of fires in these territories, unless the district has obtained the consent of the city, fire protection district, other local agency, or the Department of Forestry and Fire Protection.

The provisions of this section are necessary because of the great need for fire protection services within the area of the Irish Beach Water District. There is no other local governmental entity willing to provide this service to the people of the district. This problem is not common to all districts formed under this division. It is therefore hereby declared that a general law cannot be made applicable and that the enactment of this section as a special law is necessary for the solution of problems existing in the Irish Beach Water District.

SEC. 20. Section 71680 of the Water Code is amended to read:

71680. (a) A district may exercise any of the powers, functions, and duties which are vested in, or imposed upon, a fire protection district pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of Division 12 of the Health and Safety Code.

(b) If the district includes any part of any local agency which provides fire protection service to any territory in the district, the district shall have no authority regarding the prevention or suppression of fires, in that territory unless the district has obtained the consent of the other local agency.

SEC. 21. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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. 22. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 1014

An act to amend Section 40000.7 of, to add and repeal Sections 5105.5 and 5106.5 of, the Vehicle Code, relating to environmental license plates, and making an appropriation therefor.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 5105.5 is added to the Vehicle Code, to read:

5105.5. (a) If an applicant for an environmental license plate so requests, the department shall furnish, with any environmental license plates issued under this article, a third license plate for display upon payment of the extra fee pursuant to Section 5106.5. The third license plate shall be clearly and unalterably marked as a display license plate.

(b) The department shall advise any applicant for environmental license plates or renewal of environmental license plates of the availability and fee for the third license plate. It is the intent of the Legislature in enacting this section that the department commence advising applicants pursuant to this subdivision as soon as practicable after January 1, 1988.

(c) The third license plate shall be produced and marketed by the State of California.

(d) The display license plate furnished under this section shall not be affixed to any vehicle. The department shall provide an applicant for a display license a statement that affixing the display license plate to any vehicle is a misdemeanor.

(e) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 2. Section 5106.5 is added to the Vehicle Code, to read:

5106.5. (a) If an applicant requests a third license plate for display, the applicant shall be charged, in addition to the regular registration fee and the fee prescribed in Section 5106, a fee of thirty-five dollars ($35). The fee charged for the third license plate for display shall increase in direct proportion with any increase in the fee prescribed in Section 5106.

(b) From the revenues collected pursuant to subdivision (a) and deposited pursuant to Section 5107 in the California Environmental License Plate Fund, the Controller shall transfer to the Motor Vehicle Account in the State Transportation Fund the amount certified by the director to be necessary to provide reimbursement to the department for its administrative costs relating to the issuance of the third, display, environmental license plate.

(c) On or before January 1, 1991, the department shall submit to the Governor and the Legislature a report on measures taken to

advertise the third license plates for display, the number of these license plates annually produced, fees collected therefor, and other matters and recommendations as the department may provide.

(d) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 3. Section 40000.7 of the Vehicle Code is amended to read:

40000.7. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Section 2416, relating to regulations for emergency vehicles.

(b) Section 2800, relating to failure to obey an officer's lawful order or submit to a lawful inspection.

(c) Section 2800.1, relating to fleeing from a peace officer.

(d) Section 2801, relating to failure to obey a firefighter's lawful order.

(e) Section 2803, relating to unlawful vehicle or load.

(f) Section 2813, relating to stopping for inspection.

(g) Subdivision (b) of Section 4461 and subdivisions (b) and (c) of Section 4463, relating to disabled person placards.

(h) Section 4463.5, relating to deceptive or facsimile license plates.

(i) Section 5105.5, relating to environmental license plates.

(j) Section 5500, relating to the surrender of registration documents and license plates before dismantling may begin.

(k) Section 5753, relating to delivery of certificates of ownership and registration when committed by a dealer or any person while a dealer within the preceding 12 months.

(*l*) Section 5901, relating to dealers and lessor-retailers giving notice.

(m) Section 5901.1, relating to lessors giving notice and failure to pay fee.

(n) Section 8802, relating to the return of canceled, suspended, or revoked certificates of ownership, registration cards, or license plates, when committed by any person with intent to defraud.

(o) Section 8803, relating to return of canceled, suspended, or revoked documents and license plates of a dealer, manufacturer, remanufacturer, transporter, dismantler, or salesman.

SEC. 4. Section 40000.7 of the Vehicle Code is amended to read:

40000.7. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Section 2416, relating to regulations for emergency vehicles.

(b) Section 2800, relating to failure to obey an officer's lawful order or submit to a lawful inspection.

(c) Section 2800.1, relating to fleeing from a peace officer.

(d) Section 2801, relating to failure to obey a firefighter's lawful order.

(e) Section 2803, relating to unlawful vehicle or load and Section 2813.5, relating to commercial vehicle safety inspection stickers.

(f) Section 2813, relating to stopping for inspection.

(g) Subdivision (b) of Section 4461 and subdivisions (b) and (c) of Section 4463, relating to disabled person placards.

(h) Section 4463.5, relating to deceptive or facsimile license plates.

(i) Section 5105.5, relating to environmental license plates.

(j) Section 5500, relating to the surrender of registration documents and license plates before dismantling may begin.

(k) Section 5753, relating to delivery of certificates of ownership and registration when committed by a dealer or any person while a dealer within the preceding 12 months.

(*l*) Section 5901, relating to dealers and lessor-retailers giving notice.

(m) Section 5901.1, relating to lessors giving notice and failure to pay fee.

(n) Section 8802, relating to the return of canceled, suspended, or revoked certificates of ownership, registration cards, or license plates, when committed by any person with intent to defraud.

(o) Section 8803, relating to return of canceled, suspended, or revoked documents and license plates of a dealer, manufacturer, remanufacturer, transporter, dismantler, or salesman.

SEC. 5. The sum of sixty-one thousand four hundred dollars ($61,400) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Department of Motor Vehicles for the purpose of implementing Sections 1, 2, and 3 of this act.

SEC. 6. Section 4 of this bill incorporates amendments to Section 40000.7 of the Vehicle Code proposed by both this bill and AB 1045. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 40000.7 of the Vehicle Code, and (3) this bill is enacted after AB 1045, in which case Section 3 of this bill shall not become operative.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 1015

An act to amend and repeal Section 1572 of the Health and Safety Code, and to amend Sections 9314 and 9316 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 22, 1987 Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 1572 of the Health and Safety Code, as amended by Chapter 1305 of the Statutes of 1985, is amended to read:

1572. To the extent provided for under Section 9316 of the Welfare and Institutions Code, the functions and duties of the state department provided for under this chapter shall be performed by the Department of Aging commencing on the date the functions are transferred from the Department of Health Services to the Department of Aging. These functions shall be transferred when the Department of Aging develops an implementation plan clearly defining the authority, functions, and responsibility of the Department of Aging, and signs an interagency agreement with the state department to specify how the departments shall work together in areas of mutual concern.

The Health and Welfare Agency shall develop a plan by July 1, 1988, for streamlining the certification and licensing process for adult day health care.

The interagency agreement shall specify that the Department of Aging is designated by the state department as the agency responsible for community long-term care programs. At a minimum, the interagency agreement shall clarify each department's responsibilities on issues involving licensure and certification of adult day health care providers, payment of adult day health care claims, prior authorization of services, promulgation of regulations, and development of adult day health care Medi-Cal rates. The interagency agreement shall also specify that as of January 1, 1988, the State Department of Health Services shall delegate to the Department of Aging the responsibility of performing the financial and cost report audits and the resolution of audit appeals which are necessary to ensure program integrity. As provided for in Section 19994.10 of the Government Code, the personnel resources and funding, equivalent to one personnel year used to perform the audit responsibilities shall be transferred to the Department of Aging. This agreement shall also include provisions whereby the state department and the Department of Aging shall collaborate in the development and implementation of health programs and services for older persons and functionally impaired adults.

To the extent necessary for implementation of Section 9316 of the Welfare and Institutions Code, as used in this chapter, "director"

shall refer to the Director of the Department of Aging and "state department" shall refer to the Department of Aging. A Long-Term Care Committee is hereby established in the Department of Aging. The committee shall include, but not be limited to, a member of the California Commission on Aging, who shall be a member of the Long-Term Care Committee of the commission, a representative of the Association for Adult Day Care Services, a representative of the California Association of Area Agencies on Aging, a representative of the California Conference of Local Health Officers, a member of a local adult day health care planning council, nonprofit representatives and professionals with expertise in Alzheimer's disease or a disease of a related disorder, a member of the California Coalition of Independent Living Centers, and representatives from other appropriate state departments, including the State Department of Health Services, the State Department of Social Services, the State Department of Mental Health, the State Department of Developmental Services and the State Department of Rehabilitation, as deemed appropriate by the Director of the Department of Aging. At least one member shall be a person over 60 years of age. The committee shall function as an advisory body to the Department of Aging and advise the Director of the Department of Aging regarding development of community-based long-term care programs.

This function shall also include advice to the Director of the Department of Aging for recommendations to the State Department of Health Services on licensure, Medi-Cal reimbursement, and utilization control issues.

The committee shall be responsible for the reviewing of new programs under the jurisdiction of the department.

The committee shall assist the Director of the Department of Aging in the development of procedures and guidelines for new contracts or grants, as well as review and make recommendations on applicants. The committee 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.

Additionally, the functions of the committee shall include all of the following:

(a) The committee shall review and make recommendations on guidelines for adoption by the Director of the Department of Aging 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 of the Department of Aging concerning individual proposals for startup funds and for original licensure of proposed adult day health care centers. The Director of the Department of Aging shall make recommendations regarding licensure to the Licensing and Certification Division in the State Department of Health Services. This 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 this 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 may be held by the department in conjunction with the local adult day health care council in the county to be served. A hearing shall be held if requested by a local adult day health care council. In order to provide the greatest public input, the hearing should preferably be held in the service area to be served.

SEC. 2. Section 1572 of the Health and Safety Code, as added by Section 5 of Chapter 1600 of the Statutes of 1984, is repealed.

SEC. 3. Section 9314 of the Welfare and Institutions Code is amended to read:

9314. The department shall establish a Long-Term Care Division which shall be responsible for administering the programs that are funded for purposes of providing community-based long-term care.

SEC. 4. Section 9316 of the Welfare and Institutions Code is amended to read:

9316. The director shall establish a distinct organizational entity within the department, which shall have primary responsibility for the adult day health care program, as provided for in Chapter 3.5 (commencing with Section 1570) of Division 2 of the Health and Safety Code, and Chapter 8.7 (commencing with Section 14520) of Part 3 of Division 9. This entity shall coordinate and direct all required departmental activities for the adult day health care program.

The department and the State Department of Health Services shall develop an interagency agreement to ensure administration and program effectiveness. This agreement shall include provisions whereby the State Department of Health Services and the department shall collaborate in the development and implementation of health programs and services for older persons.

CHAPTER 1016

An act to repeal Section 69506.7 of, and to repeal and add Sections 69506 and 69506.5 of, the Education Code, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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 minimize the complexity of the process by which students apply for student financial assistance and, at the same time, to maintain strict standards of eligibility to ensure that the most needy students receive student financial assistance. It is further the intent of the Legislature to make various changes in California law to conform with the United States Higher Education Amendments of 1986 (Public Law 99-498).

SEC. 2. Section 69506 of the Education Code is repealed.

SEC. 3. Section 69506 is added to the Education Code, to read:

69506. For the purposes of determining the dependent and independent status of students, the definition set forth in the federal law or regulation shall serve as the definition for students seeking any state-funded financial assistance.

SEC. 4. Section 69506.5 of the Education Code is repealed.

SEC. 5. Section 69506.5 is added to the Education Code, to read:

69506.5. Notwithstanding Section 69506, the Student Aid Commission may, whenever it is determined to be in the best interest of the state, develop and adopt regulations that modify the federal definition for establishing the dependent and independent status of students seeking any state-funded financial assistance. It is the Legislature's intent that these regulations promote consistency between federal and state standards, encourage the maximum contribution from parents while being sensitive to individual student financial and personal circumstances, and encourage a simple financial aid application process.

(a) Prior to adopting regulations pursuant to this section, the commission shall convene an advisory committee for the purposes of seeking recommendations on criteria for student dependency status. The committee, which may be an existing committee, shall comprise representatives of the financial aid community including students, financial aid officers, representatives of the postsecondary education segments, and the California Postsecondary Education Commission.

(b) The regulations developed pursuant to this section shall be adopted as Student Aid Commission regulations 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.

(c) Prior to adopting or amending regulations pursuant to this section, the commission shall conduct, and make public, a full analysis which includes at least an examination and explanation of the cost of the change, the effect on student applicant and recipient eligibility and award levels, and the effects of implementing the criteria on those programs administered by the commission.

(d) Not later than July 1 of the year following any changes in the definition of student dependence or independence made pursuant to this section, the commission shall report to the Governor and the Legislature the impact of the changes on those programs administered by the commission.

SEC. 6. Section 69506.7 of the Education Code is repealed.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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:

The changes of this act are critical to the efficient and effective use of funds for need-based grants within public postsecondary educational institutions. In order to allow the Student Aid Commission to adopt new regulations pursuant to this act effective for the 1988–89 academic year, commencing July 1988, and reflected on the student financial aid forms printed in October 1987, it is necessary that this act take immediate effect.

CHAPTER 1017

An act to add Section 19008.5 to the Welfare and Institutions Code, relating to the Department of Rehabilitation Awards Program, and making an appropriation therefor.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 19008.5 is added to the Welfare and Institutions Code, to read:

19008.5. (a) The department is authorized to solicit and accept gifts, contributions, and grants from any source, public or private, to

establish, implement, and maintain an awards program.

(b) (1) There is hereby established the Public Awards Fund, which is continuously appropriated, without regard to fiscal years, for the purpose of this section.

(2) The director may receive contributions pursuant to this section and deposit them in the Public Awards Fund for use pursuant to subdivision (c).

(3) Sections 11005 and 16302 of the Government Code shall not apply to funds under this section.

(c) In order to achieve the public policy of the State of California, as specified in Section 19000, the director may present awards to those employers, architects, clients, ex-clients, disabled Californians nominated or selected for the Hall of Fame, and other persons whose superior cooperation and contributions to the employment of the handicapped deserve special recognition.

CHAPTER 1018

An act to amend Section 65302.3 of the Government Code, and to amend Sections 21670, 21670.1, 21671, 21673, 21674, 21675, 21676, and 21678 of, to add Section 21679 to, and to repeal Sections 21670, 21671, 21674, and 21676 of, the Public Utilities Code, relating to airport land uses.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 65302.3 of the Government Code is amended to read:

65302.3. (a) The general plan, and any applicable specific plan prepared pursuant to Article 8 (commencing with Section 65450), shall be consistent with the plan adopted or amended pursuant to Section 21675 of the Public Utilities Code.

(b) The general plan, and any applicable specific plan, shall be amended, as necessary, within 180 days of any amendment to the plan required under Section 21675 of the Public Utilities Code.

(c) If the legislative body does not concur with any provision of the plan required under Section 21675 of the Public Utilities Code, it may satisfy the provisions of this section by adopting findings pursuant to Section 21676 of the Public Utilities Code.

SEC. 2. Section 21670 of the Public Utilities Code, as amended by Section 2 of Chapter 1117 of the Statutes of 1984, is amended to read:

21670. (a) The Legislature hereby finds and declares that:

(1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and

objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.

(2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, shall establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from that requirement. The board shall, in this event, transmit a copy of the resolution to the Director of Transportation. For purposes of this section, "commission" means an airport land use commission. Each commission shall consist of seven members to be selected as follows:

(1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.

(2) Two representing the county, appointed by the board of supervisors.

(3) Two having expertise in aviation, appointed by a selection committee comprised of the managers of all of the public airports within that county.

(4) One representing the general public, appointed by the other six members of the commission.

(c) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

(d) Each member shall promptly appoint a single proxy to represent him or her in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the appointing member. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.

(e) A person having an "expertise in aviation" means a person who, by way of education, training, business, experience, vocation, or avocation has acquired and possesses particular knowledge of, and familiarity with, the function, operation, and role of airports, or is an elected official of a local agency which owns or operates an airport. The commission shall be constituted pursuant to this section on and after March 1, 1988.

SEC. 3. Section 21670 of the Public Utilities Code, as amended by Section 3 of Chapter 1117 of the Statutes of 1984, is repealed.

SEC. 4. Section 21670.1 of the Public Utilities Code is amended to read:

21670.1. (a) Notwithstanding any other provision of this article, if the board of supervisors and the city selection committee of mayors in the county each makes a determination by a majority vote that proper land use planning can be accomplished through the actions of an appropriately designated body, then the body so designated shall assume the planning responsibilities of an airport land use commission as provided for in this article, and a commission need not be formed in that county.

(b) A body designated pursuant to subdivision (a) which does not include among its membership at least two members having an expertise in aviation, as defined in subdivision (e) of Section 21670, shall, when acting in the capacity of an airport land use commission, be augmented so that that body, as augmented, will have at least two members having that expertise. The commission shall be constituted pursuant to this section on and after March 1, 1988.

SEC. 5. Section 21671 of the Public Utilities Code, as amended by Section 4 of Chapter 1117 of the Statutes of 1984, is amended to read:

21671. In any county where there is an airport operated for the general public which is owned by a city or district in another county or by another county, one of the representatives provided by paragraph (1) of subdivision (b) of Section 21670 shall be appointed by the city selection committee of mayors of the cities of the county in which the owner of that airport is located, and one of the representatives provided by paragraph (2) of subdivision (b) of Section 21670 shall be appointed by the board of supervisors of the county in which the owner of that airport is located.

SEC. 6. Section 21671 of the Public Utilities Code, as amended by Section 5 of Chapter 1117 of the Statutes of 1984, is repealed.

SEC. 8. Section 21673 of the Public Utilities Code is amended to read:

21673. In any county not having a commission or a body designated to carry out the responsibilities of a commission, any owner of a public airport may initiate proceedings for the creation of a commission by presenting a request to the board of supervisors that a commission be created and showing the need therefor to the satisfaction of the board of supervisors.

SEC. 9. Section 21674 of the Public Utilities Code, as amended by Section 7 of Chapter 1041 of the Statutes of 1982, is amended to read:

21674. The commission has the following powers and duties, subject to the limitations upon its jurisdiction set forth in Section 21676:

(a) To assist local agencies in ensuring compatible land uses in the vicinity of all new airports and in the vicinity of existing airports to the extent that the land in the vicinity of those airports is not already devoted to incompatible uses.

(b) To coordinate planning at the state, regional, and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare.

(c) To prepare and adopt an airport land use plan pursuant to Section 21675.

(d) To review the plans, regulations, and other actions of local agencies and airport operators pursuant to Section 21676.

(e) The powers of the commission shall in no way be construed to give the commission jurisdiction over the operation of any airport.

(f) In order to carry out its responsibilities, the commission may adopt rules and regulations consistent with this article.

SEC. 10. Section 21674 of the Public Utilities Code, as added by Section 8 of Chapter 1041 of the Statutes of 1982, is repealed.

SEC. 11. Section 21675 of the Public Utilities Code is amended to read:

21675. (a) Each commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission plan shall include a long-range master plan that reflects the anticipated growth of the airport during at least the next 20 years. In formulating a land use plan, the commission may develop height restrictions on buildings, may specify use of land, and may determine building standards, including soundproofing adjacent to airports, within the planning area. The comprehensive land use plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.

(b) The commission may include, within its plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission surrounding any federal military airport for all the purposes specified in subdivision (a). This subdivision does not give the commission any jurisdiction or authority over the territory or operations of any military airport.

(c) The planning boundaries shall be established by the commission after hearing and consultation with the involved agencies.

SEC. 12. Section 21676 of the Public Utilities Code, as amended by Section 9 of Chapter 1041 of the Statutes of 1982 is amended to read:

21676. (a) Each local agency whose general plan includes areas covered by an airport land use commission plan shall, by July 1, 1983, submit a copy of its plan or specific plans to the airport land use commission. The commission shall determine by August 31, 1983, whether the plan or plans are consistent or inconsistent with the commission's plan. If the plan or plans are inconsistent with the commission's plan, the local agency shall be notified and that local agency shall have another hearing to reconsider its plans. The local agency may overrule the commission after such hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.

(b) Prior to the amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the airport land use commission pursuant to Section 21675, the local agency shall first refer the proposed action to the commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The local agency may, after a public hearing, overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.

(c) Each public agency owning any airport within the boundaries of an airport land use commission plan shall, prior to modification of its airport master plan, refer such proposed change to the airport land use commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The public agency may, after a public hearing, overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.

(d) Each commission determination pursuant to subdivision (b) or (c) shall be made within 60 days from the date of referral of the proposed action. If a commission fails to make the determination within that period, the proposed action shall be deemed consistent with the commission's plan.

SEC. 13. Section 21676 of the Public Utilities Code, as added by Section 10 of Chapter 1041 of the Statutes of 1982, is repealed.

SEC. 14. Section 21678 of the Public Utilities Code is amended to read:

21678. With respect to a publicly owned airport that a public agency does not operate, if the public agency pursuant to Section 21676 or 21676.5 overrides a commission's action or recommendation, the operator of the airport shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency's decision to override the commission's action or recommendation.

SEC. 15. Section 21679 is added to the Public Utilities Code, to

read:

21679. (a) In any county in which there is no airport land use commission or other body designated to assume the responsibilities of an airport land use commission, or in which the commission or other designated body has not adopted an airport land use plan, an interested party may initiate proceedings in a court of competent jurisdiction to postpone the effective date of a zoning change, a zoning variance, the issuance of a permit, or the adoption of a regulation by a local agency, which directly affects the use of land within one mile of the boundary of a public airport within the county.

(b) The court may issue an injunction which postpones the effective date of the zoning change, zoning variance, permit, or regulation until the governing body of the local agency which took the action does one of the following:

(1) In the case of an action which is a legislative act, adopts a resolution declaring that the proposed action is consistent with the purposes of this article stated in Section 21670.

(2) In the case of an action which is not a legislative act, adopts a resolution making findings based on substantial evidence in the record that the proposed action is consistent with the purposes of this article stated in Section 21670.

(3) Rescinds the action.

(4) Amends its action to make it consistent with the purposes of this article stated in Section 21670, and complies with either paragraph (1) or (2) of this subdivision, whichever is applicable.

(c) The court shall not issue an injunction pursuant to subdivision (b) if the local agency which took the action demonstrates that the general plan and any applicable specific plan of the agency accomplishes the purposes of an airport land use plan as provided in Section 21675.

(d) An action brought pursuant to subdivision (a) shall be commenced within 30 days of the decision or within the appropriate time periods set by Section 21167 of the Public Resources Code, whichever is longer.

(e) If the governing body of the local agency adopts a resolution pursuant to subdivision (b) with respect to a publicly owned airport that the local agency does not operate, the operator of the airport shall be immune from liability for damages to property or personal injury from the local agency's decision to proceed with the zoning change, zoning variance, permit, or regulation.

(f) As used in this section, "interested party" means any owner of land within two miles of the boundary of the airport or any organization with a demonstrated interest in airport safety and efficiency.

SEC. 16. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2

of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1019

An act to amend Sections 138.4, 139.6, 3550, 3760, 6409, 6409.1, 6412, 6413.5, and 6431 of the Labor Code, relating to employment injuries and illnesses.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 138.4 of the Labor Code is amended to read:

138.4. The administrative director shall, with respect to injuries involving loss of time:

(a) Prescribe reasonable rules and regulations for the serving on the employee of notices dealing with the payment, nonpayment or delay in payment of temporary disability, permanent disability, and death benefits and the provision of vocational rehabilitation services, with copies to the administrative director. A pamphlet published or approved by the administrative director, meeting the criteria specified in subdivision (b) of Section 139.6, shall be included with the first notice of payment or notice of delay in payment served on each injured employee.

(b) Prescribe reasonable rules and regulations for providing the employee notice of any change in the amount or type of benefits being provided, the termination of benefits, and an accounting of the benefits paid, with copies to the administrative director.

(c) Prescribe reasonable rules and regulations for serving on the employee notice of rejection of any liability for compensation and the remedies available to the employee, and the employee's right to seek information and advice from an information and assistance officer or an attorney.

SEC. 2. Section 139.6 of the Labor Code is amended to read:

139.6. The administrative director shall establish and effect within the Division of Industrial Accidents a continuing program to provide information and assistance concerning the rights, benefits, and obligations of the workers' compensation law to employees and employers subject thereto. The program shall include, but not be limited to, the following:

(a) The preparation, publishing, and as necessary, updating, of guides to the California workers' compensation system for employees and employers. The guides shall detail, in easily understandable language, the rights and obligations of employees

and employers, the procedures for obtaining benefits, and the means provided for resolving disputes. Separate guides may be prepared for employees and employers. The appropriate guide shall be provided to all labor and employer organizations known to the administrative director, and to any other person upon request.

(b) The preparation, publishing, and as necessary, updating, of a pamphlet advising injured workers of their basic rights under workers' compensation law in easily understandable language. The pamphlet shall be available in both English and Spanish, and shall include basic information concerning the circumstances under which injured employees are entitled to the various types of workers' compensation benefits, the protections against discrimination because of an injury, the procedures for resolving any disputes which arise, and the right to seek information and advice from an information and assistance officer or an attorney.

SEC. 3. Section 3550 of the Labor Code is amended to read:

3550. (a) Every employer subject to the compensation provisions of this division shall post and keep posted in a conspicuous location frequented by employees, and where the notice may be easily read by employees during the hours of the workday, a notice which shall state the name of the current compensation insurance carrier of the employer, or when such is the fact, that the employer is self-insured, and who is responsible for claims adjustment.

(b) Failure to keep any notice required by this section conspicuously posted shall constitute a misdemeanor, and shall be prima facie evidence of noninsurance.

(c) This section shall not apply with respect to the employment of employees as defined in subdivision (d) of Section 3351.

(d) The form and content of the notice required by this section shall be prescribed by the administrative director and shall advise employees that all injuries should be reported to their employer. The notice shall also include, in nontechnical language, advice as to the injured employee's right to receive medical care, to select or change the treating physician pursuant to the provisions of Section 4600, and the right to receive temporary disability indemnity, permanent disability indemnity, vocational rehabilitation services, and death benefits, as appropriate. The notice shall also identify to whom injuries should be reported, and the location and telephone number of the nearest information and assistance officer.

(e) Failure of an employer to provide the notice required by this section shall automatically permit the employee to be treated by his or her personal physician with respect to an injury occurring during that failure.

(f) The notice required to be posted by this section may be made available to self-insured employers and insurers by the administrative director. Insurers shall provide this notice to each of their policyholders, with advice concerning the requirements of this section and the penalties for failure to post this notice.

SEC. 4. Section 3760 of the Labor Code is amended to read:

3760. Every employer who is insured against any liability imposed by this division shall file with the insurer a complete report of every injury to each employee as specified in Section 6409.1. If not so filed, the insurer may petition the appeals board for an order, or the appeals board may of its own motion issue an order, directing the employer to submit a report of the injury within five days after service of the order. Failure of the employer to comply with the appeals board's order may be punished by the appeals board as a contempt.

SEC. 5. Section 6409 of the Labor Code is amended to read:

6409. (a) Every physician as defined in Section 3209.3 who attends an injured employee shall file a complete report of every occupational injury or occupational illness to each employee with the employer, or if insured, with the employer's insurer, on forms prescribed for that purpose by the Division of Labor Statistics and Research. A portion of the form shall be completed by the injured employee, if he or she is able to do so, describing how the injury or illness occurred. The form shall be filed within five days of the initial examination. Inability or failure of an injured employee to complete his or her portion of the form shall not affect the employee's rights under this code, and shall not excuse any delay in filing the form. The employer or insurer, as the case may be, shall file the physician's report with the Department of Industrial Relations, through its Division of Labor Statistics and Research, within five days of receipt. Each such report of occupational injury or occupational illness shall indicate the social security number of the injured employee. If the treatment is for pesticide poisoning or a condition suspected to be pesticide poisoning, the physician shall also file a complete report with the Division of Labor Statistics and Research.

(b) As used in this section, "occupational illness" means any abnormal condition or disorder caused by exposure to environmental factors associated with employment, including acute and chronic illnesses or diseases which may be caused by inhalation, absorption, ingestion, or direct contact.

SEC. 6. Section 6409.1 of the Labor Code is amended to read:

6409.1. (a) Every employer shall file a complete report of every occupational injury or occupational illness, as defined in subdivision (b) of Section 6409, to each employee which results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid, with the Department of Industrial Relations, through its Division of Labor Statistics and Research or, if an insured employer, with the insurer. The report filed shall be the original of the form precribed for that purpose by the Division of Labor Statistics and Research. A report shall be filed concerning each injury and illness which has, or is alleged to have, arisen out of and in the course of employment, within five days after the employer obtains knowledge of the injury or illness. Each report of occupational injury or occupational illness shall indicate the social security number of the injured employee. In the case of an insured

employer, the insurer shall file with the division immediately upon receipt, the original of the employer's report, which has been received from the insured employer.

(b) In every case involving a serious injury or illness, or death, in addition to the report required by subdivision (a), a report shall be made immediately by the employer to the Division of Occupational Safety and Health by telephone or telegraph.

SEC. 7. Section 6412 of the Labor Code is amended to read:

6412. No report of injury or illness required by subdivision (a) of Section 6409.1 shall be open to public inspection or made public, nor shall those reports be admissible as evidence in any adversary proceeding before the Workers' Compensation Appeals Board. However, the reports required of physicians by subdivision (a) of Section 6409 shall be admissible as evidence in the proceeding, except that no physician's report shall be admissible as evidence to bar proceedings for the collection of compensation, and the portion of any physician's report completed by an employee shall not be admissible as evidence in any proceeding before the Workers' Compensation Appeals Board.

SEC. 8. Section 6413.5 of the Labor Code is amended to read:

6413.5. Any employer or physician who fails to comply with any provision of subdivision (a) of Section 6409, or Section 6409.1, 6409.2, 6409.3, or 6410 may be assessed a civil penalty of not less than fifty dollars ($50) nor more than two hundred dollars ($200) by the director or his or her designee if he or she finds a pattern or practice of violations, or a willful violation of any of these provisions. Penalty assessments may be contested in the manner provided in Section 3725. Penalties assessed pursuant to this section shall be deposited in the General Fund.

SEC. 9. Section 6431 of the Labor Code is amended to read:

6431. Any employer who violates any of the posting or recordkeeping requirements as prescribed by regulations adopted pursuant to Sections 6408 and 6410, or who fails to post any notice required by Section 3550, shall be assessed a civil penalty of up to one thousand dollars ($1,000) for each violation.

CHAPTER 1020

An act to amend Section 11165 of, and to repeal Section 11165.1 of, the Penal Code, relating to child abuse.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 11165 of the Penal Code is amended to read:

11165. As used in this article:

(a) "Child" means a person under the age of 18 years.

(b) "Sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(1) "Sexual assault" means conduct in violation of one or more of the following sections of this code: Section 261 (rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b) of Section 288 (lewd or lascivious acts upon a child under 14 years of age), 288a (oral copulation), 289 (penetration of a genital or anal opening by a foreign object), or 647a (child molestation).

(2) "Sexual exploitation" refers to any of the following:

(A) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(B) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any parent or guardian of a child under his or her control who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving obscene sexual conduct for commercial purposes.

(C) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(c) "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(1) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(2) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for

religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor shall not constitute neglect.

(d) "Willful cruelty or unjustifiable punishment of a child" means a situation where any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

(e) "Corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

(f) "Abuse in out-of-home care" means a situation of physical injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect, or corporal punishment or injury, or the willful cruelty or unjustifiable punishment of a child, as defined in this article, where the person responsible for the child's welfare is a licensee, administrator, or employee of a licensed community care facility, child day care facility, or any other facility licensed to care for children, or the administrator or an employee of a public or private school, or other institution or agency.

(g) "Child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by Section 273a (willful cruelty or unjustifiable punishment of a child) or 273d (corporal punishment or injury). "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article.

(h) "Child care custodian" means a teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; a licensee, an administrator, or an employee of a community care facility licensed to care for children; headstart teacher; a licensing worker or licensing evaluator; public assistance worker; an employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities; a social worker or a probation officer or any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(i) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the

Health and Safety Code, or a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(j) "Nonmedical practitioner" means a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a marriage, family, or child counselor; or a religious practitioner who diagnoses, examines, or treats children.

(k) "Child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department.

(*l*) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

SEC. 2. Section 11165.1, as added to the Penal Code by Chapter 1572 of the Statutes of 1985, is repealed.

SEC. 3. Section 11165.1, as added to the Penal Code by Chapter 1593 of the Statutes of 1985, is repealed.

CHAPTER 1021

An act to amend Section 653f of the Penal Code, relating to crimes.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who solicits another to offer or accept or join in the offer or acceptance of a bribe, or to commit or join in the commission of robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, is punishable by imprisonment in the county jail not more than one year or in the state prison, or by fine of not more than ten thousand dollars ($10,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both such fine and imprisonment.

(b) Every person who solicits another to commit or join in the commission of murder is punishable by imprisonment in the state prison for three, six, or nine years.

(c) Every person who solicits another to commit rape by force or

violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, is punishable by imprisonment in a state prison for two, three, or four years.

(d) An offense charged in violation of subdivision (a), (b), or (c) must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances.

CHAPTER 1022

An act to add Section 221.5 to the Civil Code, to amend Sections 1502, 1503.5, 1506, 1512, 1530.5, and 1536 of the Health and Safety Code, and to amend Sections 361.2, 727, 11400, 11401, and 11402 of, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 221.5 is added to the Civil Code, to read:

221.5. (a) "Adoption agency" for the purposes of this chapter, means any individual, other than a parent, or entity engaged in the business of providing adoption services, who does any one or more of the following:

(1) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.

(2) Assesses the birth parents, prospective adoptive parents, or child.

(3) Places children for adoption.

(4) Supervises adoptive placements.

(b) Private adoption agencies shall be organized and operated on a nonprofit basis.

SEC. 2.5. Section 1502 of the Health and Safety Code is amended to read:

1502. As used in this chapter:

(a) "Community care facility" means any facility, place, or building which is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes the following:

(1) "Residential facility" means any family home, group care facility, or similar facility determined by the director, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

(2) "Adult day care facility" means any facility which provides nonmedical care to persons 18 years of age or older in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis.

(3) "Day treatment facility" means any facility which provides nonmedical care, counseling, educational or vocational support, or social rehabilitation services on less than a 24-hour basis to persons under 18 years of age who would otherwise be placed in foster care or who are returning to families from foster care. Program standards for these facilities shall be developed by the department, pursuant to Section 1530, in consultation with day treatment and foster care providers.

(4) Foster family agency" means any individual or organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care. Private foster family agencies shall be organized and operated on a nonprofit basis.

(5) "Foster family home" means any residential facility providing 24-hour care for six or fewer foster children which is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. Such placement may be by a public or private child placement agency or by a court order, or by voluntary placement by a parent, parents, or guardian.

(6) "Small family home" means any residential facility providing 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities.

(7) "Social rehabilitation facility" means any residential facility which provides social rehabilitation services for no longer than 18 months in a group setting to adults recovering from mental illness who temporarily need assistance, guidance, or counseling. Program components shall be subject to program standards pursuant to Section 5458.1.

(8) "Community treatment facility" means any residential facility which provides mental health treatment services to children in a group setting. Program components shall be subject to program standards developed by the State Department of Mental Health pursuant to Section 5405 of the Welfare and Institutions Code.

Nothing in this section shall be construed to prohibit or discourage placement of persons who have mental or physical disabilities into any category of community care facility that meets the needs of the individual placed, if the placement is consistent with the licensing regulations of the department.

(9) "Adoption agency" means any individual, other than a parent, or entity engaged in the business of providing adoption services, who does any one or more of the following:

(A) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.

(B) Assesses the birth parents, prospective adoptive parents, or child.

(C) Places children for adoption.

(D) Supervises adoptive placements.

Private adoption agencies shall be organized and operated on a nonprofit basis.

(b) "Department" or "state department" means the State Department of Social Services.

(c) "Director" means the Director of Social Services.

SEC. 3. Section 1503.5 of the Health and Safety Code is amended to read:

1503.5. (a) A facility shall be deemed to be an "unlicensed community care facility" and "maintained and operated to provide nonmedical care" if it is unlicensed and not exempt from licensure and any one of the following conditions is satisfied:

(1) The facility is providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

(2) The facility is held out as or represented as providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

(3) The facility accepts or retains residents who demonstrate the need for care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

(4) The facility represents itself as a licensed community care facility.

(5) The facility is performing any of the functions of a foster family agency or holding itself out as a foster family agency.

(6) The facility is performing any of the functions of an adoption agency or holding itself out as performing any of the functions of an adoption agency as specified in paragraph (9) of subdivision (a) of Section 1502.

(b) No unlicensed community care facility, as defined in subdivision (a), shall operate in this state.

(c) Upon discovery of an unlicensed community care facility, the department shall refer residents to the appropriate local or state ombudsman, or placement, adult protective services, or child protective services agency if either of the following conditions exist:

(1) There is an immediate threat to the clients' health and safety.

(2) The facility will not cooperate with the licensing agency to apply for a license, meet licensing standards, and obtain a valid license.

SEC. 4. Section 1506 of the Health and Safety Code is amended to read:

1506. (a) (1) Any holder of a valid license issued by the department which authorizes the licensee to engage in any foster

family agency functions, may place children only in a certified family home which has been certified by that agency or in any licensed foster family home selected.

(2) Any home selected and certified for the reception and care of children placed by that licensee shall not, during the time it is certified and used only by that agency for these placements or care, be subject to the provisions of Section 1508. A certified family home may not be concurrently licensed as a foster family home or as any other licensed residential facility.

(b) (1) A foster family agency shall certify to the department that such home has met the department's licensing standards.

(2) The foster family agency shall issue a certificate of approval to the certified family home upon its determination that it has met the standards established by the department and before the placement of any child in the home.

(3) If the agency determines that the home no longer meets the standards, it shall notify the department and the local placing agency.

(c) The department shall, develop licensing regulations differentiating between foster family agencies which provide treatment of children in foster families and those which provide nontreatment services.

(d) As used in this chapter, "certified family home" means a family residence certified by a licensed foster family agency and issued a certificate of approval by that agency as meeting licensing standards, and used only by that foster family agency for placements.

SEC. 5. Section 1512 of the Health and Safety Code is amended to read:

1512. Each residential community care facility shall state, on its client information form or admission agreement, and on its patient's rights form, the facility's policy concerning family visits and other communication with resident clients and shall, except as otherwise provided in this section, promptly post notice of its visiting policy at a location in the facility that is accessible to residents and families. The requirement that a facility post notice of the facility's visiting policy does not apply to any facility serving six or fewer clients.

The community care facility's policy concerning family visits and communication shall be designed to encourage regular family involvement with the resident client and shall provide ample opportunities for family participation in activities at the facility.

SEC. 6. Section 1530.5 of the Health and Safety Code is amended to read:

1530.5. (a) The state department, in establishing regulations, including provisions for periodic inspections, under this chapter for foster family homes and certified family homes of foster family agencies providing 24-hour care for six or fewer foster children, shall consider these homes as private residences, and shall establish regulations for these foster family homes and certified family homes of foster family agencies as an entirely separate regulation package

from regulations for all other community care facilities. These foster family homes and certified family homes of foster family agencies shall not be subject to civil penalties pursuant to Section 1548. The department, in adopting and amending regulations for these foster family homes and certified family homes of foster family agencies, shall consult with foster parent and foster family agency organizations in order to ensure compliance with the requirement of this section.

(b) This section shall not apply to small family homes or foster family agencies as defined in Section 1502.

SEC. 7. Section 1536 of the Health and Safety Code is amended to read:

1536. At least annually, the director shall publish and make available to interested persons a list or lists covering all licensed community care facilities, other than foster family homes and certified family homes of foster family agencies providing 24-hour care for six or fewer foster children, the services for which each facility has been licensed or issued a special permit, and the evaluation rating of each such community care facility, as determined pursuant to Section 1535. A list or lists containing changes in facility ratings shall be published and made available periodically as determined by the director.

To encourage the recruitment of foster family homes and certified family homes of foster family agencies, protect their personal privacy, and to preserve the security and confidentiality of the placements in the homes, the names, addresses, and other identifying information of facilities licensed as foster family homes and certified family homes of foster family agencies providing 24-hour care for six or fewer children shall be considered personal information for purposes of the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). This information shall not be disclosed by any state or local agency pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) except as necessary for administering the licensing program, facilitating the placement of children in these facilities, and providing names and addresses only to bona fide professional foster parent organizations upon request.

SEC. 8. Section 361.2 of the Welfare and Institutions Code is amended to read:

361.2. (a) When a court orders removal of a minor pursuant to Section 361, the court shall first determine whether there is a parent of the minor, with whom the minor was not residing at the time that the events or conditions arose that brought the minor within the provisions of Section 300, who desires to assume custody of the minor. If such a parent requests custody the court shall place the minor with the parent unless it finds that placement with that parent would be detrimental to the minor.

If the court places the minor with such a parent it may do either

of the following:

(1) Order that such parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the minor. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the supervision of the juvenile court. In such a case the court may order that reunification services be provided to the parent or guardian from whom the minor is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the minor.

(b) When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the minor to be under the supervision of the probation officer who may place the minor in any of the following:

(1) The home of a relative, including a noncustodial parent.

(2) A foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(3) A suitable licensed community care facility.

(4) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(5) A home or facility in accordance with the federal Indian Child Welfare Act.

(c) If the minor is taken from the physical custody of the minor's parents or guardians and unless the minor is placed with relatives, the minor shall be placed in foster care in the county of residence of the minor's parents or guardians in order to facilitate reunification of the family.

In the event that there are no appropriate placements available in the parents' or guardians' county, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parents' or guardians' community of residence.

Nothing in this section shall be interpreted as requiring multiple disruptions of the minor's placement corresponding to frequent changes of residence by the parents or guardians. In determining whether the minor should be moved, the probation officer will take into consideration the potential harmful effects of disrupting the placement of the minor and the parents' or guardians' reason for the move.

(d) Whenever the probation officer must change the placement

of the minor and is unable to find a suitable placement within the county and must place the minor outside the county, no such placement shall be made until he or she has served written notice on the parents or guardians at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons which require placement outside the county. The parents or guardians may object to the placement not later than seven days after receipt of the notice and, upon objection the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the minor's particular needs require placement outside the county.

(e) Where the court has ordered a minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license application with the State Department of Social Services, if all of the following certification conditions are met:

(1) A preplacement home visit is made by the probation officer to determine the suitability of the family home.

(2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The probation officer notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the minor. If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

(f) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the minor will be served by granting visitation rights to the minor's grandparents. The court shall clearly specify those rights to the supervising probation officer.

SEC. 9. Section 727 of the Welfare and Institutions Code is amended to read:

727. (a) When a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 601 or Section 602 the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of such a minor, including medical treatment, subject to further order of the court.

The court shall order the care, custody, and control of the minor to be under the supervision of the probation officer who may place the minor in any of the following:

(1) The home of a relative.

(2) A suitable licensed community care facility.

(3) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(b) Where the court has ordered a specific minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license application with the State Department of Social Services, provided that all the following certification conditions are met:

(1) A preplacement home visit is made by the probation officer to determine the suitability of the family home.

(2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The probation officer notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the minor. If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

When a minor has been adjudged a ward of the court on the ground that he or she is a person described in Section 601 or 602 and the court finds that notice has been given in accordance with Section 661, and when the court orders that a parent or guardian shall retain custody of such minor subject to the supervision of the probation officer, the parent or guardian may be required to participate with such minor in a counseling or education program including, but not limited to, parent education and parenting programs operated by community colleges, school districts or other appropriate agencies designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents and guardians of the minor who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out the provisions of subdivisions (a) and (b), including orders to appear before a county financial evaluation officer.

When counseling or other treatment services are ordered for the minor, the parent, guardian, or foster parent shall be ordered to participate in those services, unless participation by the parent, guardian, or foster parent is deemed by the court to be inappropriate or potentially detrimental to the child.

SEC. 10. Section 11400 of the Welfare and Institutions Code is amended to read:

11400. For the purposes of this article, the following definitions shall apply:

(a) "Aid to Families with Dependent Children-Foster Care (AFDC-FC)" means the aid provided in behalf of needy children in

foster care under the terms of this division.

(b) "Case plan" means a written document which at a minimum specifies the type of home in which the child shall be placed, the appropriateness of the home for meeting the child's needs, the agency's plan for ensuring that the child, the family, and foster parents receive services, and the appropriateness of the services provided to the child, in order to meet the child's needs while in foster care, and to reunify the child with his or her family, or, when reunification is not possible, to facilitate an alternate permanent plan.

(c) "Certified family home" means a family residence certified by a licensed foster family agency and issued a certificate of approval by that agency as meeting licensing standards, and used only by that foster family agency for placements.

(d) "Family home" means the family residency of a licensee in which 24-hour care and supervision are provided for children.

(e) "Foster care" means the 24-hour out-of-home care provided to children whose own families are unable or unwilling to care for them, and who are in need of temporary or long-term substitute parenting.

(f) "Foster family agency" means any individual or organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care. Private foster family agencies shall be organized and operated on a nonprofit basis.

(g) "Group home" means a nondetention privately operated residential home of any capacity that provides services in a group setting to children in need of care and supervision, as required by paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code.

(h) "Periodic review" means review of a child's status by the juvenile court or by an administrative review panel, which shall include a determination of the continuing need for placement in foster care, evaluation of the goals for the placement and the progress toward meeting these goals, and development of a target date for the child's return home or establishment of alternative permanent placement.

(i) "Permanency planning hearing" means a hearing conducted by the juvenile court in which the child's future status, including whether the child shall be returned home or another permanent plan shall be developed, is determined.

(j) "Placement and care" refers to the responsibility for the welfare of a child vested in an agency or organization by virtue of the agency or organization having (1) been delegated care, custody, and control of a child by the juvenile court, (2) taken responsibility, pursuant to a relinquishment or termination of parental rights on a child, (3) taken the responsibility of supervising a child detained by the juvenile court pursuant to Section 319 or 636, or (4) signed a

voluntary placement agreement for the child's placement; or to the responsibility designated to an individual by virtue of his or her being appointed the child's legal guardian.

(k) "Preplacement preventive services" means services which are designed to help children remain with their families by preventing or eliminating the need for removal.

(*l*) "Relative" means a person who can be a "caretaker relative" of a dependent child under Section 406 of the Social Security Act.

(m) "Voluntary placement" means an out-of-home placement of a minor by (1) county welfare department after the parents or guardians have requested the assistance of the county welfare department and have signed a voluntary placement agreement; or (2) the county welfare department licensed public or private adoption agency, or the department acting as an adoption agency, after the parents have requested the assistance of either the county welfare department, the licensed public or private adoption agency, or the department acting as an adoption agency for the purpose of adoption planning, and have signed a voluntary placement agreement.

(n) "Voluntary placement agreement" means a written agreement between either the county welfare department, a licensed public or private adoption agency, or the department acting as an adoption agency, and the parents or guardians of a minor which specifies the terms of the voluntary placement.

(o) "Original placement date" means the most recent date on which the court detained a child and ordered an agency to be responsible for supervising the child or the date on which an agency assumed responsibility for a child due to termination of parental rights, relinquishment, or voluntary placement.

SEC. 11. Section 11401 of the Welfare and Institutions Code is amended to read:

11401. Aid in the form of AFDC-FC shall be provided under this chapter on behalf of any child under the age of 18, except as provided in Section 11403, who meets the conditions of subdivision (a), (b), (c), (d) or (e):

(a) The child has been relinquished, for purposes of adoption, to a licensed adoption agency, or the department, or the parental rights of either or both of his or her parents have been terminated after an action under the Civil Code has been brought by a licensed adoption agency or the department, provided that the licensed adoption agency or the department, if responsible for placement and care, provides to such children all services as required by the department to children in foster care.

(b) (1) The child has been removed from the physical custody of his or her parent or guardian as a result of a judicial determination that continuance in the home would be contrary to the child's welfare and that, if the child was placed in foster care, reasonable efforts were made, consistent with Chapter 5 (commencing with Section 16500) of Part 4, to prevent or eliminate the need for removal

of the child from his or her home and to make it possible for the child to return to his or her home, or, in cases where the first contact with the family occurs during an emergency situation in which the child could not safely remain at home even with reasonable efforts being provided, the child has been removed as a result of a judicial determination that lack of preplacement preventive efforts, as defined in Section 16501.1, was reasonable, and any of the following apply:

(A) The child has been adjudged a dependent child of the court on the grounds that he or she is a person described by Section 300.

(B) The child has been adjudged a ward of the court on the grounds that he or she is a person described by Sections 601 and 602.

(C) The child has been detained under a court order pursuant to Section 319 or 636 which remains in effect.

(2) To be eligible for federal financial participation, the child must meet the conditions of paragraph (1) and have been deprived of parental support or care due to any of the reasons set out under Section 11250.

(c) The child has been voluntarily placed by his or her parent or guardian pursuant to Section 11401.1 or in a demonstration county, pursuant to Section 16550, et seq.

(d) The child is living in the home of a nonrelated legal guardian.

(e) The child has been placed in foster care under the federal Indian Child Welfare Act. Sections 11402, 11404, and 11405 shall not be construed as limiting payments to Indian children, as defined in the federal Indian Child Welfare Act, placed in accordance with that act.

SEC. 12. Section 11402 of the Welfare and Institutions Code is amended to read:

11402. In order to be eligibile for AFDC-FC, a child must be placed in one of the following:

(a) The home of a relative, provided such home has been documented by the social worker or probation officer as being suited to the needs of the child and the child is otherwise eligible for federal financial participation in the AFDC-FC payment.

(b) The licensed family home of a nonrelative.

(c) A licensed group home, provided that the placement worker has documented that such a placement is necessary to meet the treatment needs of the child and that the facility offers those treatment services.

(d) The home of a nonrelated legal guardian or the home of a former nonrelated legal guardian when the guardianship of a child who is otherwise eligible for AFDC-FC has been dismissed due to the child's attaining age 18.

(e) A home which has been certified by a social worker or probation officer as meeting licensing standards, provided that a family home license has been applied for and has not been denied.

(f) An exclusive-use home.

CHAPTER 1023

An act to add Section 75076.5 to the Government Code, relating to the Judges' Retirement System.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 75076.5 is added to the Government Code, to read:

75076.5. Notwithstanding any other provision of law, in no event shall an allowance payable pursuant to this chapter to a retired member on the effective date of a reduction in judges' salaries ever be reduced to an amount less than the amount produced by multiplying the amount of the highest salary the retired member was paid while serving as a judge by the following percentages:

(a) For an allowance computed pursuant to Section 75032 or 75060.6, 50 percent.

(b) For an allowance computed pursuant to the first clause of subdivision (a) of Section 75076, 65 percent.

(c) For an allowance computed pursuant to the second clause of subdivision (a) of Section 75076, 75 percent.

(d) For an allowance computed pursuant to Section 75033 or 75033.5, the percentage used to calculate the original retirement allowance pursuant to Section 75033 or 75033.5.

CHAPTER 1024

An act to add Section 50871.5 to the Government Code, relating to local retirement systems.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 50871.5 is added to the Government Code, to read:

50871.5. Notwithstanding any other provision of this chapter, if all members defined by Section 50804 or Section 50805 or both Sections 50804 and 50805 agree in writing thereto, the governing body of a local agency may, by resolution, provide to those members, in lieu of the benefits provided under this chapter, retirement benefits which are comparable to those provided by the Public Employees' Retirement Law to local safety members. The change in benefits authorized by this section shall not be construed as a

violation of Section 50882 or 50883.

SEC. 2. Any cost incurred as a result of a local agency adopting the provisions of this section would be the responsibility of the agency based upon the optional nature of this act and given the requirement that a resolution be initiated by the agency prior to the time the increased benefits may be provided.

CHAPTER 1025

An act to amend Sections 42122 and 85021 of the Education Code, to amend Sections 12463 and 29089 of, and to add Sections 7902.7 and 37200 to, the Government Code, relating to local governments expenditure limitations.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 42122 of the Education Code is amended to read:

42122. Each budget shall show a complete plan and itemized statement of all proposed expenditures of the school district and of all estimated revenues for the ensuing fiscal year, together with a comparison as to each item of revenue and expenditures, with the actual revenues and expenditures for the last completed fiscal year and the actual and estimated expenditures for the existing fiscal year. The budget shall also include the appropriations limit and the total annual appropriations subject to limitation as determined pursuant to Division 9 (commencing with Section 7900) of Title 1 of the Government Code. The county superintendent of schools shall from his or her own records supply to the school district any information that the school district may need to make the comparisons required by this section.

SEC. 1.5. Section 42122 of the Education Code is amended to read:

42122. Effective July 1, 1988, each budget shall show a complete plan and itemized statement of all proposed expenditures of the school district and of all estimated revenues for the ensuing fiscal year, together with a comparison of revenues and expenditures for the existing fiscal year. The budget shall also include the appropriations limit and the total annual appropriations subject to limitation as determined pursuant to Division 9 (commencing with Section 7900) of Title 1 of the Government Code. The county superintendent of schools shall from his or her own records supply to the school district any information that the school district may need to make the comparisons required by this section.

SEC. 2. Section 85021 of the Education Code is amended to read:

85021. The adopted annual financial and budget report of a community college district shall show, as specified by the office of the Chancellor of the California Community Colleges, a statement of the proposed expenditures and of the estimated revenues for the ensuing fiscal year, together with a comparison of each item of revenue and expenditure, with the actual revenues and expenditures of the fiscal year just completed. The tentative as well as the publication annual financial and budget reports may show estimated where actual figures cannot be determined at the time. The budget shall also include the appropriations limit and the total annual appropriations subject to limitation as determined pursuant to Division 9 (commencing with Section 7900) of Title 1 of the Government Code.

The county superintendent of schools shall from his or her own records supply to the community college district any information that it may need to make the comparisons required by this section.

SEC. 3. Section 7902.7 is added to the Government Code, to read:

7902.7. (a) The appropriations limit of a city incorporated on or after January 1, 1988, shall be determined pursuant to Sections 56842.5 and 57104 and approved by the voters at the incorporation election.

(b) The appropriations limit of a special district formed on or after January 1, 1988, shall be determined pursuant to Sections 56842.5 and 57104 and approved by the voters at the formation election.

(c) The appropriations limit of a county formed on or after January 1, 1988, shall be determined pursuant to Section 23332 and approved by the voters at the formation election.

SEC. 4. Section 12463 of the Government Code is amended to read:

12463. The Controller shall annually compile and publish reports of the financial transactions of each county, city, and school district, as defined in Section 80 of the Education Code, within this state, together with such other matter as he or she deems of public interest. The reports shall include the appropriations limits and the total annual appropriations subject to limitation of the counties, cities, and school districts. The reports shall be made in the time, form, and manner prescribed by the Controller.

SEC. 5. Section 29089 of the Government Code is amended to read:

29089. The resolution of adoption of the budget of the county and of each special district shall specify:

(a) Appropriations by objects of expenditure within each budget unit.

(b) Other financing uses by budget unit.

(c) Intrafund transfers by budget unit.

(d) Residual equity transfers-out by fund.

(e) Appropriations for contingencies, by fund.

(f) Provisions for reserves and designations, by fund and purpose.

(g) The means of financing the budget requirements.

(h) The appropriations limit and the total annual appropriations subject to limitation as determined pursuant to Division 9 (commencing with Section 7900) of Title 1.

SEC. 6. Section 37200 is added to the Government Code, to read:

37200. If the legislative body adopts an annual budget, the budget document shall include the appropriations limit and the total annual appropriations subject to limitation as determined pursuant to Division 9 (commencing with Section 7900) of Title 1.

SEC. 7. Section 1.5 of this bill incorporates amendments to Section 42122 of the Education Code proposed by both this bill and AB 93. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 42122 of the Education Code, and (3) this bill is enacted after AB 93, in which case Section 1 of this bill shall not become operative.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1026

An act to amend Section 35160.5 of the Education Code, relating to schools.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987]

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

SECTION 1. Section 35160.5 of the Education Code is amended to read:

35160.5. (a) On or before December 1, 1984, the governing board of each school district shall, as a condition for the receipt of school apportionments from the State School Fund, adopt rules and regulations establishing school district policies as they relate to the following:

(1) Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board.

(2) The establishment of district policies ensuring that each probationary certificated employee is assigned to a school within the

district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district.

(3) The establishment of policies and procedures that parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district. These policies and procedures shall provide for appropriate mechanisms to respond to, and where possible, to resolve the complaints.

(b) The governing board of each school district that maintains one or more schools containing any of grades 7 to 12, inclusive, shall, as a condition for the receipt of an inflation adjustment pursuant to Section 42238.1, establish a school district policy regarding participation in extracurricular and cocurricular activities by pupils in grades 7 to 12, inclusive. The criteria, which shall be applied to extracurricular and cocurricular activities, shall ensure that pupil participation is conditioned upon satisfactory educational progress in the previous grading period. Pupils who are eligible for differential standards of proficiency pursuant to subdivision (d) of Section 51215 are covered by this section consistent with that subdivision. No person shall classify a pupil as eligible for differential standards of proficiency pursuant to subdivision (d) of Section 51215 for the purpose of circumventing the intent of this subdivision.

(1) For purposes of this subdivision, "extracurricular activity" means a program that has all of the following characteristics:

(A) The program is supervised or financed by the school district.

(B) Pupils participating in the program represent the school district.

(C) Pupils exercise some degree of freedom in either the selection, planning, or control of the program.

(D) The program includes both preparation for performance and performance before an audience or spectators.

(2) For purposes of this subdivision, an "extracurricular activity" is not part of the regular school curriculum, is not graded, does not offer credit, and does not take place during classroom time.

(3) For purposes of this subdivision, a "cocurricular activity" is defined as a program that may be associated with the curriculum in a regular classroom.

(4) For purposes of this subdivision, "satisfactory educational progress" shall include, but not be limited to, the following:

(A) Maintenance of minimum passing grades, which is defined as at least a 2.0 grade point average in all enrolled courses on a 4.0 scale.

(B) Maintenance of minimum progress toward meeting the high school graduation requirements prescribed by the governing board.

(5) For purposes of this subdivision, "previous grading period" does not include any grading period in which the pupil was not in attendance for all, or a majority of, the grading period due to absences excused by the school for reasons such as serious illness or injury, approved travel, or work. In that event, "previous grading period" is deemed to mean the grading period immediately prior to

the grading period or periods excluded pursuant to this paragraph.

(6) A program that has, as its primary goal, the improvement of academic or educational achievements of pupils is not an extracurricular or cocurricular activity as defined by this section.

(7) The governing board of each school district may adopt, as part of its policy established pursuant to this subdivision, provisions that would allow a pupil who does not achieve satisfactory educational progress, as defined in paragraph (4), in the previous grading period to remain eligible to participate in extracurricular and cocurricular activities during a probationary period. The probationary period shall not exceed one semester in length, but may be for a shorter period of time, as determined by the governing board of the school district. A pupil who does not achieve satisfactory educational progress, as defined in paragraph (4), during the probationary period shall not be allowed to participate in extracurricular and cocurricular activities in the subsequent grading period.

(8) Nothing in this subdivision shall preclude the governing board of a school district from imposing a more stringent academic standard than that imposed by this subdivision. If the governing board of a school district imposes a more stringent academic standard, the governing board shall establish the criteria for participation in extracurricular and cocurricular activities at a meeting open to the public pursuant to Section 35145.

The governing board of each school district shall annually review the school district policies adopted pursuant to the requirements of this section.

CHAPTER 1027

An act to amend Sections 5008, 5090.01, 5090.02, 5090.15, 5090.16, 5090.17, 5090.24, 5090.32, 5090.33, 5090.35, 5090.36, 5090.41, 5090.43, 5090.44, 5090.50, 5090.55, 5090.61, and 5090.70 of, to amend and renumber Section 5090.10 of, to add Sections 5090.10, 5090.11, 5090.47, 5090.53, and 5090.64 to, and to repeal Section 5090.37 of, the Public Resources Code, to amend Section 8352.8 of the Revenue and Taxation Code, and to amend Section 42001.9 of, to amend and repeal Section 38225 of, and to add Section 38366 to, the Vehicle Code, relating to off-highway vehicles, and making an appropriation therefor.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 5008 of the Public Resources Code is amended to read:

5008. (a) The department shall protect the state park system and

the state vehicular recreation area and trail system from damage and preserve the peace therein.

(b) The director may designate any officer or employee of the department as a peace officer. The primary duties of the peace officer shall be the enforcement of this division, Sections 4442 and 4442.5, the rules and regulations of the department, Chapter 5 (commencing with Section 650) of Division 3 of the Harbors and Navigation Code, the rules and regulations of the Department of Boating and Waterways, Chapter 2 (commencing with Section 9850) of Division 3.5 of the Vehicle Code, and Division 16.5 (commencing with Section 38000) of the Vehicle Code and to arrest persons for the commission of public offenses within the property under its jurisdiction. The authority and powers of the peace officer shall be limited to those conferred by law upon peace officers listed in Section 830.2 of the Penal Code.

(c) The department shall protect property included in the California recreational trail system and the property included in the recreational trail system under Section 6 of Chapter 1234 of the Statutes of 1980 from damage and preserve the peace therein. The primary duties of any officer or employee designated a peace officer under this section shall include enforcement of the rules and regulations established by the department under subdivision (*l*) of Section 6 of Chapter 1234 of the Statutes of 1980 and the arrest of persons for the commission of public offenses within the property included in the recreational trail system under Section 6 of Chapter 1234 of the Statutes of 1980.

(d) Any person who violates the rules and regulations established by the department is guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail not exceeding 90 days, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment, except that at the time a particular action is commenced, the judge may, considering the recommendation of the prosecuting attorney, reduce the charged offense from a misdemeanor to an infraction. Any person convicted of the offense after such a reduction shall be punished by a fine of not less than ten dollars ($10) nor more than one thousand dollars ($1,000).

SEC. 1.5. Section 5090.01 of the Public Resources Code is amended to read:

5090.01. This chapter shall be known and may be cited as the Off-Highway Motor Vehicle Recreation Act of 1988.

SEC. 2. Section 5090.02 of the Public Resources Code is amended to read:

5090.02. (a) The Legislature finds that off-highway motor vehicles are enjoying an ever-increasing popularity in California and that the indiscriminate and uncontrolled use of those vehicles may have a deleterious impact on the environment, wildlife habitats, native wildlife, and native flora.

(b) The Legislature hereby declares that effectively managed

areas and adequate facilities for the use of off-highway vehicles and conservation and enforcement are essential for ecologically balanced recreation.

(c) Accordingly, it is the intent of the Legislature that:

(1) Existing off-highway motor vehicle recreational areas, facilities, and opportunities be expanded and be managed in a manner consistent with this chapter, in particular to maintain sustained long-term use.

(2) New off-highway motor vehicle recreational areas, facilities, and opportunities be provided and managed pursuant to this chapter in a manner that will sustain long-term use.

(3) When areas or trails or portions thereof cannot be maintained to appropriate established standards for sustained long-term use, they shall be closed to use and repaired, to prevent accelerated erosion. Those areas shall remain closed until they can be managed within the soil loss standard or shall be closed and rehabilitated.

(4) Prompt and effective implementation of the Off-Highway Motor Vehicle Recreation Program by the Division of Off-Highway Motor Vehicle Recreation shall have an equal priority among other programs in the department.

(5) Off-highway motor vehicle recreation be managed in accordance with this chapter through financial assistance to local government and joint undertakings with agencies of the United States.

SEC. 3. Section 5090.10 of the Public Resources Code is amended and renumbered to read:

5090.12. The Auditor General shall prepare and submit a program performance audit report to the Legislature on or before January 1, 1991, on the implementation of this chapter. The report shall include recommendations for legislation deemed necessary by the Auditor General.

SEC. 4. Section 5090.10 is added to the Public Resources Code, to read:

5090.10. "Conservation" means activities, practices, and programs that sustain soils, plants, wildlife, and their habitat in accordance with the standards adopted pursuant to Section 5090.35.

SEC. 4.5. Section 5090.11 is added to the Public Resources Code, to read:

5090.11. "Rehabilitation" means, upon closure of the unit or any portion thereof, the restoration of land to the contours, the plant communities, and the plant covers comparable to those on surrounding lands or at least those which existed prior to off-highway motor vehicle use.

SEC. 5. Section 5090.15 of the Public Resources Code is amended to read:

5090.15. There is in the department the Off-Highway Motor Vehicle Recreation Commission, consisting of seven members, three of whom shall be appointed by the Governor, two of whom shall be appointed by the Senate Committee on Rules, and two of whom shall

be appointed by the Speaker of the Assembly.

In order to be appointed to the commission, a nominee shall represent one or more of the following groups:

(a) Off-highway vehicle recreation groups.

(b) Biological scientists.

(c) Groups or associations of predominantly rural landowners.

(d) Soil scientists.

(e) Environmental protection organizations.

Whenever any reference is made to the State Park and Recreation Commission pertaining to a duty, power, purpose, responsibility, or jurisdiction of the State Park and Recreation Commission with respect to the State Vehicular Recreation Area and Trail System, as established by this chapter, it shall be deemed to be a reference to, and to mean, the Off-Highway Motor Vehicle Recreation Commission.

It is the intent of the Legislature that appointees to the commission represent all of the groups delineated in subdivisions (a) to (e), inclusive, to the extent possible.

SEC. 6. Section 5090.16 of the Public Resources Code is amended to read:

5090.16. In making appointments to the commission, the Governor, Senate Committee on Rules, and Speaker of the Assembly shall consider the places of residence of the members of the commission in order to ensure statewide representation.

SEC. 7. Section 5090.17 of the Public Resources Code is amended to read:

5090.17. (a) The terms of the members of the commission shall be four years. The members first appointed to the commission shall classify themselves by lot so that the terms of three members expire January 15, 1984, the terms of two members expire January 15, 1985, and the terms of two members expire January 15, 1986.

(b) As vacancies occur on and after January 15, 1988, appointments to the commission shall comply with the qualifications for membership specified in Sections 5090.15 and 5090.16.

SEC. 8. Section 5090.24 of the Public Resources Code is amended to read:

5090.24. The commission has the following particular duties and responsibilities:

(a) Be fully informed regarding all governmental activities affecting the program.

(b) Meet from time to time at various locations throughout the state to receive comments on the implementation of the program.

(c) Consider, upon the request of any owner or tenant, whose property is in the vicinity of any land in the system, any alleged adverse impacts occurring on that person's property from the operation of off-highway motor vehicles and recommend to the division suitable measures for the prevention of any adverse impact determined by the commission to be occurring, and suitable measures for the rehabilitation of adversely impacted property.

(d) Review and comment annually to the director on the proposed budget of expenditures from the fund.

(e) Review and approve all minor and major capital outlay expenditures from the fund proposed for inclusion in the budget.

(f) Review and make recommendations, after conducting at least one public hearing, to the director on the development of a model off-highway motor vehicle recreation safety program and eligibility criteria and procedures for a safety education local assistance grant program.

(g) Report biennially to the Legislature, the Governor, appropriate agencies of government, off-highway motor vehicle users and user groups, and the general public regarding the status of the program, the condition of natural and cultural resources of areas and trails receiving state off-highway motor vehicle funds, and resolution of conflicts of use in those areas and trails, and the status of off-highway motor vehicle recreation generally.

The report shall also include a summary of monitoring data compiled and rehabilitative work concluded during the preceding two years.

SEC. 9. Section 5090.32 of the Public Resources Code is amended to read:

5090.32. All of the following functions, duties, and responsibilities of the department shall be performed exclusively by the division:

(a) The planning, acquisition, development, construction, and conservation and rehabilitation of lands in and for the system.

(b) The direct management, maintenance, administration, and operation of lands in the system and the providing of law enforcement and appropriate public safety activities.

(c) Management of the fund.

(d) The implementation of all aspects of the program.

SEC. 10. Section 5090.33 of the Public Resources Code is amended to read:

5090.33. The division has all of the following particular duties and responsibilities:

(a) The implementation of the policies established by the commission.

(b) Provision of staff assistance to the commission.

(c) Preparation of plans for lands in, or proposed to be included in, the system; provided, however, that no plan shall be prepared in any instance specified in subdivision (c) of Section 5002.2.

(d) The conduct of surveys and the preparation of studies that are necessary or desirable for implementing the program.

(e) The recruitment and utilization of volunteers to further the program.

(f) The preparation and coordination of safety education programs through grants, cooperative agreements, and contracts.

(g) The auditing of grants, and the performance of any applicant in expending a grant, made pursuant to Article 5 (commencing with Section 5090.50).

(h) Provision of the enforcement of Division 16.5 (commencing with Section 38000) of the Vehicle Code and other laws regulating the use or equipment of off-highway motor vehicles in areas acquired, maintained or operated by funds from the fund; however, the Department of the California Highway Patrol shall have responsibility for enforcement on highways.

SEC. 11. Section 5090.35 of the Public Resources Code is amended to read:

5090.35. (a) The protection of public safety, the appropriate utilization of lands in the system, and the conservation of land resources in the system are of the highest priority in the management of the system; and, accordingly, the division shall promptly repair and continuously maintain areas and trails, anticipate and prevent accelerated and unnatural erosion, and restore lands damaged by erosion to the extent possible.

(b) Notwithstanding Section 5090.23, the department, in consultation with the United States Soil Conservation Service, the United States Forest Service, the Bureau of Land Management, and the Department of Conservation shall adopt a generic soil loss standard by January 1, 1991, at least sufficient to allow rehabilitation of off-highway motor vehicle areas and trails. Requirements of this chapter which are dependent upon the adoption of this soil loss standard shall not become operative until the standard is adopted. The department shall also make an inventory of wildlife populations and their habitats in each area in the system and shall prepare a wildlife habitat protection program to sustain a viable species composition specific to each area, by July 1, 1989.

(c) The division shall monitor the condition of soils and wildlife habitat in each area of the system each year in order to determine whether the soil loss standards and habitat protection plans are being met.

(d) Upon a determination that the soil loss standard and habitat protection plans are not being met in any area in the system, the department shall direct the division to close temporarily and repair, to prevent accelerated erosion, that area, or portion thereof funded by the Off-Highway Vehicle Fund, until the soil loss standard and habitat protection plans are capable of being met.

(e) Upon a determination that the soil loss standard and habitat protection plans cannot be met in any area in the system, the department shall direct the division to close that area, or any portion thereof funded from the Off-Highway Vehicle Fund, and to reclaim and rehabilitate the area.

(f) The division may not fund trail construction unless it complies with the conservation specifications prescribed in subdivision (b). The division may not fund trail construction where conservation is not feasible.

SEC. 12. Section 5090.36 of the Public Resources Code is amended to read:

5090.36. The division may enter into contracts with

concessionaires and cooperative agreements with other public agencies, pursuant to procedures specified in this division, for the care and maintenance of lands in the system, including contracts for law enforcement services with public agencies having peace officer enforcement powers.

SEC. 13. Section 5090.37 of the Public Resources Code is repealed.

SEC. 15. Section 5090.41 of the Public Resources Code is amended to read:

5090.41. The following lands within the boundaries of the state vehicular recreation areas listed in subdivision (a) of Section 5090.40 are part of the state park system:

(a) Sixty acres classified as natural preserve and 830 acres classifed as cultural preserve at Hungry Valley State Vehicular Recreation Area. The division shall continue the management of 4,160 acres of grassland as a part of the State Vehicular Recreation Area and Trail System, but shall provide for the operation of off-highway motor vehicles in a manner compatible with the continued healthy growth of natural grasses and associated flora.

(b) One acre classified as a cultural preserve at the Ocotillo Wells State Vehicular Recreation Area.

(c) Two hundred eighty acres at Hollister Hills State Vehicular Recreation Area set aside for nature study and closed to the operation of off-highway motor vehicles . The division shall carry out the above designations protecting their natural and cultural values by taking appropriate measures, which may include the erection of physical barriers to off-highway vehicle use.

SEC. 16. Section 5090.43 of the Public Resources Code is amended to read:

5090.43. (a) State vehicular recreation areas shall be established on lands where topographic features and associated recreational opportunities for off-highway motor vehicles are the important values and in accordance with the factors specified in Section 5090.35. Areas shall be developed, managed, and operated for the purpose of making the fullest public use of the outdoor recreational opportunities present, and the natural and cultural elements of the environment may be managed or modified to enhance the recreational experience consistent with the requirements of Section 5090.35.

(b) Lands shall be selected for acquisition for state vehicular recreation areas so as to minimize the need for establishing sensitive areas.

(c) After January 1, 1988, no new cultural or natural preserves or state wildernesses shall be established within state vehicular recreation areas. To protect natural and cultural values, sensitive areas within state vehicular recreation areas may be designated by the department if the Off-Highway Motor Vehicle Recreation Commission holds a public hearing and makes a recommendation therefor. These sensitive areas shall be managed in accordance with

Sections 5019.71 and 5019.74, which define the purpose and management of natural and cultural preserves. If off-highway motor vehicle use results in damage to any natural or cultural values, appropriate measures shall be taken to protect these lands from any further damage. These measures may include the erection of physical barriers and shall include the rehabilitation of the damage to natural resources and the repair of damage to cultural resources.

SEC. 17. Section 5090.44 of the Public Resources Code is amended to read:

5090.44. State vehicular recreation trails shall consist of corridors which are designated and maintained for recreational travel by off-highway motor vehicles, which are not generally suitable or maintained for normal travel by conventional two-wheel drive vehicles, and which are designated for off-highway motor vehicle travel by the owner of, or other person or public entity having control over, the property traversed by the trail. State vehicular recreation trails may include lands designated and maintained as trailheads. State vehicular recreation trails shall be selected and managed in accordance with this chapter. Trails designated pursuant to this section may be known as the California Statewide Motorized Trail.

SEC. 18. Section 5090.47 is added to the Public Resources Code, to read:

5090.47. Money in the fund shall be used to pay for the repair of any boundary fence that segregates off-highway vehicle use from adjoining landowners and is adjacent to an off-highway vehicle site that is funded by the fund, when the fence has become broken or damaged by off-highway vehicle users.

SEC. 19. Section 5090.50 of the Public Resources Code is amended to read:

5090.50. Grants may be made to cities, counties, and appropriate districts for the planning, acquisition, development, construction, maintenance, administration, operation, and conservation of trails, trailheads, areas, and other facilities for the use of off-highway motor vehicles that are in accordance with local plans and any plans for off-highway motor vehicle recreation areas and trails prepared by the division and for the enforcement of laws and regulations regarding the use of off-highway vehicles within the project site.

Every applicant for a grant shall comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000)). This paragraph is declaratory of, and does not constitute a change in, existing law.

SEC. 20. Section 5090.53 is added to the Public Resources Code, to read:

5090.53. (a) Money in the fund may be granted pursuant to Section 5090.50 or expended pursuant to Section 5090.55 for projects to fulfill the conditions outlined below and for public health and safety facilities.

(b) However, no funds may be granted pursuant to Section

5090.50 or encumbered pursuant to Section 5090.55 for the acquisition of land for, or the development or construction of, a new trail, trailhead, area, or other facility for the use of off-highway motor vehicles after July 1, 1989, unless all of the following conditions are met:

(1) The recipient has completed wildlife habitat and soil surveys and has prepared a wildlife habitat protection program to sustain a viable species composition for the project area.

(2) The recipient agrees to monitor the condition of soils and wildlife in the project area each year in order to determine whether the soil loss standard adopted pursuant to Section 5090.35 and the wildlife habitat protection programs are being met.

(3) The recipient agrees that, whenever the soil loss standard adopted pursuant to Section 5090.35 and the wildlife habitat protection programs are not being met in any project area, the recipient will temporarily close and repair, to prevent accelerated erosion, that area, or any portion thereof, until the soil loss standard adopted pursuant to Section 5090.35 and the wildlife habitat protection program are capable of being met.

(4) The recipient agrees to enforce the registration of off-highway motor vehicles and the other provisions of Division 16.5 (commencing with Section 38000) of the Vehicle Code and to enforce the other applicable laws regarding the equipping and use of off-highway motor vehicles.

SEC. 21. Section 5090.55 of the Public Resources Code is amended to read:

5090.55. Any moneys in the fund allocated pursuant to subdivision (a) of Section 5090.61 and not appropriated for local assistance grants pursuant to Section 5090.50, shall be available for appropriation to the division for expenditure pursuant to cooperative agreements with agencies of the United States for any joint undertaking of any function that the division is authorized by this chapter to perform.

No cooperative agreement shall become effective until the division has determined that the participating agency of the United States has completed environmental review procedures that are at least comparable to those of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

SEC. 22. Section 5090.61 of the Public Resources Code is amended to read:

5090.61. Moneys in the fund shall be available for appropriation in accordance with the following allocation:

(a) An amount, not to exceed 50 percent of the revenues from the special fee required by subdivision (b) of Section 38225 of the Vehicle Code and the revenues transferred from the Motor Vehicle Fuel Account, is available for local assistance grants pursuant to Article 5 (commencing with Section 5090.50). Any portion of this amount not granted to local public agencies shall be available to the division for cooperative agreements with agencies of the United

States pursuant to Section 5090.55.

(b) The remainder of the revenues from the special fee required by subdivision (b) of Section 38225 of the Vehicle Code and the remainder of the revenues transferred from the Motor Vehicle Fuel Account, together with all other moneys in the fund, shall be available for the support of the division in implementing the program and for the planning, acquisition, development, construction, maintenance, administration, operation, and conservation of lands in the system. As used in this subdivision, "support of the division" includes functions performed outside the division by others on behalf of the division, including costs incurred on behalf of the division for personnel management and training, accounting and fiscal analysis, records, purchasing, public information activities, consultation of professional scientists and reclamation experts for purposes of Section 5090.35, and legal services. "Support of the division" does not include any costs incurred by, or attributable to, the director or the director's immediate staff or their salaries.

SEC. 23. Section 5090.64 is added to the Public Resources Code, to read:

5090.64. (a) Funds allocated pursuant to Section 8352.8 of the Revenue and Taxation Code shall be expended by the division or by cities, counties, or appropriate districts, or by agencies of the United States, solely for the following activities on lands in the system:

(1) Conservation activities carried out for the prevention or reduction of soil loss, wildlife loss, and habitat loss as defined in Sections 5090.35, 5090.50, and 5090.53.

(2) Enforcement activities consisting of employing, equipping, and supervising peace officers for the purpose of protecting natural resources, enforcement of Division 16.5 (commencing with Section 38000) of the Vehicle Code, enforcement of Sections 4442 and 4442.5 of this code, and enforcement of other laws regulating the equipment and use of off-highway motor vehicles, and the construction of physical barriers and other means of traffic control.

(b) This section shall become operative July 1, 1988.

SEC. 24. Section 5090.70 of the Public Resources Code is amended to read:

5090.70. This chapter shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 25. Section 8352.8 of the Revenue and Taxation Code is amended to read:

8352.8. (a) The Conservation and Enforcement Services Account is hereby established as an account in the Off-Highway Vehicle Fund. Subject to Sections 8352 and 8352.1, on the first day of every month there shall be transferred from money deposited in the Motor Vehicle Fuel Account to the Conservation and Enforcement Services Account 33 percent of the total amount determined on the basis of the estimates contained in the most recent reports prepared

pursuant to Sections 8352.6, 8352.7, and this section.

(b) On or before August 15, 1987, and every two years thereafter, the Department of Transportation shall prepare, or cause to be prepared, in cooperation with the Department of Parks and Recreation, a report setting forth the current estimate of the amount of money credited to the Motor Vehicle Fuel Account that is attributable to taxes imposed upon distributions of motor vehicle fuel estimated to have been used in the off-highway operation of vehicles required to be registered as off-highway vehicles by Division 16.5 (commencing with Section 38000) of the Vehicle Code, but which were not so registered, and shall submit a copy of the report to the Legislature.

(c) Funds in the Conservation and Enforcement Services Account shall be allocated to the Division of Off-Highway Motor Vehicle Recreation of the Department of Parks and Recreation for expenditure when appropriated by the Legislature for the purposes of Section 5090.64 of the Public Resources Code.

(d) Funds accruing to the Motor Vehicle Fuel Account on and after January 1, 1987, which are otherwise subject to Section 8352.6, shall, until the first day of the month following the month in which an estimate is prepared pursuant to subdivision (b), be transferred to the Off-Highway Vehicle Fund in accordance with Section 8352.6.

SEC. 26. Section 38225 of the Vehicle Code, as amended by Section 1 of Chapter 1248 of the Statutes of 1985, is amended to read:

38225. (a) A service fee of nine dollars ($9) shall be paid to the department for the issuance or renewal of identification of off-highway motor vehicles subject to identification, except as expressly exempted under this division.

(b) In addition to the service fee specified in subdivision (a), a special fee of six dollars ($6) shall be paid at the time of payment of the service fee for the issuance or renewal of an identification plate or device. All fees received by the department pursuant to this subdivision, and all day use, overnight use, or annual or biennial use fees for state vehicular recreation areas received by the Department of Parks and Recreation, shall be deposited in the Off-Highway Vehicle Fund, which is hereby created. There shall be a separate reporting of special fee revenues by vehicle type, including four-wheeled vehicles, three-wheelers, motorcycles, and snowmobiles. All money in the fund is continuously appropriated for expenditure by the Department of Parks and Recreation for the purposes specified in Article 6 (commencing with Section 5090.60) of Chapter 1.25 of Division 5 of the Public Resources Code.

(c) In addition to the service fees specified in subdivision (a), a fee of one dollar ($1) shall be paid at the time of issuance or renewal of identification of off-highway motor vehicles subject to identification, except as expressly exempted under this division. The department shall deposit the fee received under this subdivision in the Motor Vehicle Account in the State Transportation Fund. The money deposited in the account pursuant to this subdivision shall be

available, upon appropriation by the Legislature, for expenditure to offset the costs of maintaining the uniformed field strength of the Department of the California Highway Patrol.

(d) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date. Any unencumbered funds remaining in the Off-Highway Vehicle Fund on January 1, 1993, shall be transferred to the General Fund.

SEC. 27. Section 38225 of the Vehicle Code, as amended by Section 2 of Chapter 1248 of the Statutes of 1985, is amended to read:

38225. (a) A service fee of nine dollars ($9) shall be paid to the department for the issuance or renewal of identification of off-highway motor vehicles subject to identification, except as expressly exempted under this division.

(b) In addition to the service fees specified in subdivision (a), a fee of one dollar ($1) shall be paid at the time of issuance or renewal of identification of off-highway motor vehicles subject to identification, except as expressly exempted under this division. The department shall deposit the fee received under this subdivision in the Motor Vehicle Account in the State Transportation Fund.

(c) This section shall become operative on January 1, 1993.

SEC. 28. Section 38366 is added to the Vehicle Code, to read:

38366. (a) Notwithstanding Section 4442 of the Public Resources Code, and except for vehicles with mufflers as provided in Article 2 (commencing with Section 27150) of Chapter 5 of Division 12, no person shall use, operate, or allow to be used or operated, any off-highway motor vehicle, as defined in Section 38006, on any forest-covered land, brush-covered land, or grass-covered land unless the vehicle is equipped with a spark arrester maintained in effective working order.

(b) A spark arrester affixed to the exhaust system of a vehicle 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 or which is qualified and rated by the United States Forest Service.

(d) Subdivision (a) shall not be applicable to vehicles being operated off the highway in an organized racing or competitive event upon a closed course, which is conducted under the auspices of a recognized sanctioning body and by permit issued by the fire protection authority having jurisdiction.

SEC. 29. Section 42001.9 of the Vehicle Code is amended to read:

42001.9. Every person convicted for a violation of Section 38020 shall be punished by a fine of not less than fifty dollars ($50) for a first offense, and not more than two hundred fifty dollars ($250) for every subsequent offense.

SEC. 30. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 1028

An act to amend Section 53602.1 of the Government Code, to amend Section 50155 of, and to repeal Section 436.43 of, the Health and Safety Code, to repeal Section 26405 of the Public Resources Code, to amend Section 20020 of the Vehicle Code, and to repeal Section 16 of Chapter 352 of the Statutes of 1983, relating to the Legislative Analyst.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 53602.1 of the Government Code is amended to read:

53602.1. (a) Notwithstanding any other provision of this article, the Board of Directors of the Southern California Rapid Transit District, when the district has money in a sinking fund of, or surplus money in, its treasury not required for the immediate necessities of the district, may invest that portion of the money which it determines to be wise and expedient in futures contracts in heating oil, crude oil, or gasoline on the New York Mercantile Exchange.

(b) The annual fiscal audit of the district shall include a report in a separate section on any investments made pursuant to subdivision (a).

(c) This section shall remain in effect only until January 1, 1989, and shall have no force or effect on or after that date, unless a later enacted statute, which is enacted before January 1, 1989, deletes or extends that date.

SEC. 2. Section 436.43 of the Health and Safety Code is repealed.

SEC. 3. Section 50155 of the Health and Safety Code is amended to read:

50155. The Legislative Analyst shall include as needed in the annual budget analysis an analysis of the costs and benefits of tax-exempt mortgage revenue bond financing programs of the California Housing Finance Agency and of cities, counties, and cities and counties pursuant to the provisions enacted by Chapter 114 of the Statutes of 1982, Chapter 1069 of the Statutes of 1979, Chapter 48 of the Statutes of 1975, Chapter 1201 of the Statutes of 1973, and Chapter 610 of the Statutes of 1977, as amended. The analyst shall

include information with respect to the cost to the state of tax incentives available to sponsors of housing developments under these programs, and shall specify the assumptions upon which the cost estimate is made.

The analyst shall also include information with respect to the benefits derived from the use of these tax incentives, including the incomes, family size, rents, and mortgage payments of initial occupants; the number, size, cost, and geographical distribution of the units developed; the length of the time the units shall be held for occupancy by targeted income groups, and, where applicable, the number of years units shall be held as rentals, and the distribution of housing developments among for-profit, limited dividend, and nonprofit sponsors.

SEC. 4. Section 26405 of the Public Resources Code is repealed.

SEC. 5. Section 20020 of the Vehicle Code is amended to read:

20020. The Legislative Analyst shall, on or before March 15, 1988, and biennially thereafter, report to the Legislature, using a representative sampling, on the experiences of local law enforcement agencies under, and the effects of, Section 20018. Local law enforcement agencies shall cooperate with the Legislative Analyst in this regard.

SEC. 6. Section 16 of Chapter 352 of the Statutes of 1983 is repealed.

CHAPTER 1029

An act to add Sections 12660 and 12661 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 12660 is added to the Vehicle Code, to read:

12660. (a) The department may establish a program authorizing a driving school licensed pursuant to Chapter 1 (commencing with Section 11100) of Division 5 to issue a student license to operate a class 3 vehicle to any applicant 18 years of age or older.

(1) The department may charge any driving school participating in the program a fee not to exceed two dollars ($2) per applicant to recover the department's cost in establishing and monitoring the program. The fee that a participating school may charge an applicant for a student license may not exceed the fee which the department charges the school for the license.

(2) The department may remove a driving school from the program if the department determines that the school has issued a student license fraudulently, or has otherwise not followed the

requirements of the program.

(3) Any such fraudulent conduct may result in cause for suspension or revocation of the driving school license.

(4) Applicants shall meet the qualification standards specified in regulations adopted by the department pursuant to Section 12661.

(b) The department shall submit a report to the Legislature on the progress of the program established pursuant to subdivision (a) within two years after the program is implemented. The report shall include, but not be limited to, an analysis of the costs and benefits of the program and shall include recommendations by the department.

(c) The director may terminate the program at any time the department determines that continued operation of the program would have an adverse effect on traffic safety. The finding upon which the termination is based shall be reported to the Legislature within 30 days following termination of the program.

SEC. 2. Section 12661 is added to the Vehicle Code, to read:

12661. The department, in consultation with the State Department of Education, shall adopt regulations for the issuance of student licenses pursuant to Section 12660. The department and the State Department of Education shall seek advice and input on those regulations from the public, law enforcement, and the driving school industry. The regulations shall include all of the following:

(a) Standards and procedures for the issuance of student licenses pursuant to Section 12660, including the determination of an applicant's qualifications under Section 12805.

(b) Standards and procedures to ensure that all records of a driving school relating to the physical or mental condition of any student are confidential, except to the department.

(c) Standards and procedures for monitoring the issuance of student licenses.

(d) A requirement that each student license issued pursuant to Section 12660 be accompanied by a verbal and written description of the limitations of that license in terms of duration and use.

(e) Any other requirements necessary to carry out Section 12660.

CHAPTER 1030

An act to amend Section 16724 of, and to add Article 6 (commencing with Section 16780) to Chapter 4 of Part 3 of Division 4 of Title 2 of, the Government Code, relating to state general obligation bonds, and making an appropriation therefor.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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 enable the accomplishment of savings in both debt service costs to the state and reorganization of state debt by providing for the refunding of general obligation bonds of the state issued under bond acts hereafter adopted by the Legislature and approved by the electors which expressly mention the right of the state to refund the bonds so authorized. The refundings will ordinarily involve the issuance of the refunding bonds some time before the bonds being refunded are actually retired, and the aggregate amount of outstanding debt during that time will therefore be greater than it would have been if no refunding had occurred. However, since the payment of debt service on the refunded bonds will be provided for by the proceeds of the refunding bonds, the debt service which is paid from the General Fund will in fact be reduced and the state's debt will be reorganized to the benefit of the state and its taxpayers.

SEC. 2. Section 16724 of the Government Code is amended to read:

16724. The bond act shall contain all of the following provisions:

(a) A statement of the total amount of bonds authorized to be issued and the purpose for which the proceeds from the sale of the bonds may be used.

(b) The creation of a committee and fund, and the naming of the board.

(c) A statement that the bonds are valid obligations of the state and a pledge of the full faith and credit of the state for the punctual payment of both principal and interest thereof.

(d) An appropriation from the General Fund in the State Treasury of the sum annually as shall be necessary to pay the principal and interest on the bonds as they become due and payable.

(e) A requirement that there be collected annually in the same manner and at the same time as other state revenue is collected the sum, in addition to the ordinary revenues of the state, as is required to pay the principal and interest on the bonds; and a provision making it the duty of all officers charged by law with any duty in regard to the collections of the revenue to do and perform each and every act which is necessary to collect that additional sum.

(f) A provision requiring the transfer into the General Fund in the State Treasury, on the several dates on which funds are remitted pursuant to Section 16676 of the Government Code for the payment of the then maturing principal and interest on the bonds, from the fund, so far as available therein, of amounts equal to all sums so becoming due for principal and interest; and a provision that if the money so returned on the remittance dates is less than the principal and interest then due and payable, the balance remaining unpaid shall be transferred to the General Fund out of the fund as soon thereafter as it shall become available, together with interest thereon from the remittance dates until so returned at the same rate as borne

by the bonds, compounded semiannually. This provision is not required whenever the fund will have receipts only from the proceeds of the sale of bonds issued pursuant to the bond act, or from proceeds of investments made pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.

(g) A provision incorporating the provisions of this chapter, and a declaration that the provisions hereof are included in said act as though set out in full therein.

(h) A statement that the bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of this chapter, and that approval of the authorization of the bonds by the electors includes approval of any bonds issued to refund the bonds originally issued.

SEC. 3. Article 6 (commencing with Section 16780) is added to Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, to read:

Article 6. Refunding Bonds

16780. The committee may provide for the issuance and sale or exchange of refunding bonds for the purpose of redeeming, retiring, or purchasing for retirement, outstanding bonds at or before their maturity, if the committee determines that refunding is necessary or advisable in order (a) to effect a favorable reorganization of the debt structure of the state, or (b) to effect a saving in debt service cost to the state, as measured by the present value of that saving.

16781. Except as otherwise provided in this article, all of the provisions of this chapter except Sections 16730 and 16757 are applicable to the issuance and sale of refunding bonds.

16782. (a) Refunding bonds may be issued in a principal amount sufficient to provide funds, either directly or by the purchase of nonredeemable securities, the principal and interest on which shall provide funds for the payment of any or all of the following:

(1) The principal of or purchase price of the bonds to be refunded by the refunding bonds.

(2) All expenses incident to the calling, retiring, purchasing, or paying of the outstanding bonds and the issuance of the refunding bonds, including any excess of the par value of the refunding bonds over the selling price thereof.

(3) Interest upon the refunding bonds from the date of sale to the date of payment of the bonds to be refunded, whether at maturity, pursuant to the call thereof or pursuant to any agreement with the holders thereof.

(4) Any premium necessary in the calling, retiring, or purchase of the outstanding bonds.

(5) The interest accruing on the outstanding bonds to the date of their call, retirement, or purchase.

Refunding bonds may be exchanged at not less than their par value and accrued interest for outstanding bonds to be refunded thereby,

and this chapter with respect to the sale of bonds does not apply to that exchange.

(b) Notwithstanding subdivision (a), the principal amount of any issue of refunding bonds shall not exceed the original aggregate principal amount of the series of bonds to be refunded. If there remains authorized but unissued bonds under the original bond act for the program which was funded by the series of bonds to be refunded, the principal amount of refunding bonds above the original aggregate principal amount of bonds to be refunded shall be charged against such unused authorization.

16783. Refunding bonds may be issued before the first date upon which the bonds being refunded are subject to call or redemption. The final maturity date of any refunding bonds shall not be later than the final maturity date of the series of bonds being refunded.

16784. The Refunding Escrow Fund is hereby created as a special fund in the State Treasury and is continuously appropriated for the purposes of this section. The proceeds of each sale of refunding bonds shall be (1) set aside in a separate account within the Refunding Escrow Fund, (2) held in trust for the benefit of the holders of either or both of the bonds which are to be refunded or of the refunding bonds as provided in the resolution of the committee authorizing the issuance of the refunding bonds, (3) used only for the payment of the principal of, and interest and any redemption premium on, or the purchase price of the refunded bonds for the payment of interest on the refunding bonds up to the date of the redemption or payment of the bonds to be refunded, and (4) for the other purposes set forth in Section 16782. Moneys in each separate account shall be invested by the Treasurer in accordance with the resolution of the committee providing for the issuance of the refunding bonds, and any income from that investment shall be credited to the account from which the investment was made.

16785. Refunding bonds shall be valid and binding obligations of the State of California, and the full faith and credit of the State of California shall be pledged for the punctual payment of the principal of and interest on the bonds as the principal and interest become due and payable.

16786. This article applies only to the refunding of bonds authorized at a statewide election held after the effective date of this article pursuant to a bond act expressly mentioning the right of the state to refund the bonds so authorized. In any such bond act, the provisions included therein pursuant to subdivisions (c), (d), (e), and (f) of Section 16724 apply to refunding bonds to the same extent and in the same manner as those provisions applied to the bonds being refunded.

16787. In any report of outstanding general obligation bonds or bonded debt of the state, the Controller shall include both refunding bonds and bonds which have been refunded but not yet retired, but shall in the same report deduct either the refunded bonds, for the retirement of which sufficient moneys or securities have been

deposited in the Refunding Escrow Fund, or the refunding bonds, if interest thereon is pledged to be paid from moneys or securities deposited in the Refunding Escrow Fund until the redemption or payment of the bonds to be refunded, so as to show the net total of bonds or bonded debt to be paid from the General Fund or future revenues of the state other than the income from the investment of the Refunding Escrow Fund.

CHAPTER 1031

An act to amend Sections 10167.4 and 10167.12 of, and to add Section 10167.17 to, the Business and Professions Code, relating to prepaid rental listing services.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 10167.4 of the Business and Professions Code is amended to read:

10167.4. The commissioner may require such proof as he or she may deem advisable concerning the honesty and truthfulness of (a) any applicant for a license as a prepaid rental listing service, (b) the designated agents of the applicant, (c) the officers, directors, and any persons owning 25 percent or more of the shares of any corporation making such an application, or (d) any person owning or controlling a beneficial ownership interest of 25 percent or more in the entity making application before authorizing the issuance of a license for a location. For this purpose, the commissioner may hold a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and may refuse to issue a license to an applicant who does not furnish satisfactory proof of his or her honesty and truthfulness or of the honesty and truthfulness of the corporate officers, directors, and shareholders. To assist in this determination, the commissioner shall require the fingerprinting of every original applicant including designated agents, officers, directors, and persons owning 25 percent or more of the shares of the corporate applicant.

SEC. 2. Section 10167.12 of the Business and Professions Code is amended to read:

10167.12. (a) The commissioner may suspend or revoke the license of a prepaid rental listing service or the license of the service to operate at one or more locations for either of the following:

(1) A violation of this article by a licensee or by an employee or agent, including a designated agent, of the licensee.

(2) A conviction of a licensee, or a designated agent, or of an officer, director, or owner of 25 percent or more of the shares of a

corporate licensee for a crime which is substantially related to the qualifications, functions, or duties of a prepaid rental listing service licensee.

(b) For the purpose of determining whether grounds exist for suspending or revoking the license of a prepaid rental listing service the commissioner shall hold a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 3. Section 10167.17 is added to the Business and Professions Code, to read:

10167.17. The commissioner shall, by regulation, make prepaid rental listing service licensees and applicants for prepaid rental listing service licenses subject to the same provisions respecting licensure as are applicable to real estate licenses under Sections 10151.5, 10156.5, 10156.6, 10156.7, 10200, and 10201.

CHAPTER 1032

An act to amend Sections 922.4 and 922.5 of the Insurance Code, relating to insurance.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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 and that it will submit itself to the jurisdiction of the courts of this state, or a court of competent jurisdiction in any state of the United States and designate the commissioner or a designated attorney in this state as its agent for service of process in this state in any action, suit, or proceeding instituted by or on behalf of the ceding insurer for any matter arising out of the reinsurance, 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 and maintained 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 (1) issued or confirmed by a banking institution which is a member of the Federal Reserve System and of financial standing satisfactory to the commissioner, or (2) issued by a California state chartered bank which is insured by the Federal Deposit Insurance Corporation and meets the conditions established by the commissioner. For purposes of this subdivision, a confirming bank undertakes the identical terms and obligations of the issuer including those set forth herein. 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 and that it will submit itself to the jurisdiction of the courts of this state, or a court of

competent jurisdiction in any state of the United States and designate the commissioner or a designated attorney in this state as its agent for service of process in this state in any action, suit, or proceeding instituted by or on behalf of the ceding insurer for any matter arising out of the reinsurance.

(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 and maintained 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 (1) issued or confirmed by a banking institution which is a member of the Federal Reserve System and of financial standing satisfactory to the commissioner, or (2) issued by a California state chartered bank which is insured by the Federal Deposit Insurance Corporation and meets the conditions established by the commissioner. For purposes of this subdivision, a confirming bank undertakes the identical terms and obligations of the issuer including those set forth herein. The changes enacted to this subdivision at the 1982 Regular Session shall apply only to life insurers.

CHAPTER 1033

An act to amend Section 22209 of the Business and Professions Code, relating to crimes.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. The Legislature finds that the citizens of this state have a substantial interest in protecting small children from harm and possibly even death, as evidenced by the numerous warning labels found on common household items.

The Legislature finds, however, that certain retailers use polyethylene plastic bags as containers for products sold to consumers without affixing warning labels to the bags. Thus, for the sake of cutting costs, certain retailers have become neglectful of their responsibility to warn the purchaser of a product that polyethylene bags can cause suffocation if they are used improperly.

The Legislature, therefore, finds and declares that all retailers, distributors, and manufacturers shall be required by law to affix warning labels to polyethylene bags in order that consumers might

be made aware of the dangers resulting from a misuse of these bags.

SEC. 2. Section 22200 of the Business and Professions Code is amended to read:

22200. No bag made of plastic material of an average gauge thinner than 0.001 inch which is large enough to fit over a child's head shall be used by any business establishment as a container for products delivered to purchasers, or by any other business establishment to package articles delivered to customers or other persons doing business with the establishment, or, after January 1, 1988, shall be directly sold, delivered, or given to any business establishment located in the state of California by any manufacturer, supplier, or distributor after January 1, 1988, unless there is printed upon such bag, or upon a gummed label which is securely attached to such bag, in clear legible type the following: "CAUTION--KEEP AWAY FROM SMALL CHILDREN. THE THIN FILM MAY CLING TO NOSE AND MOUTH AND PREVENT BREATHING," or a similar warning that the bag is dangerous to small children.

SEC. 2.5. There shall be no cause of action prior to January 1, 1988, based on the amendments to Section 22200 of the Business and Professions Code made by Section 2 of this act.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 1034

An act to amend Sections 50516, 50531, 50748.1, 50770, 50901, 50902, 50904, 50905, 50907, 50908, 50909, 50911, 50916, 50953, 50954, 51000, 51003, 51004, 51006, 51050, 51055, 51066, 51069, 51070, 51127, 51152, 51200, 51251, 51335, 51340, 51352, 51650, 51654, 51655, and 51659 of, to amend and renumber Sections 51068.5 and 51351 of, to add Sections 50744, 50759, 50767, and 51103 to, to repeal Sections 50759, 50767, 51005.5, 51057, 51068, and 51803 of, and to repeal Article 5.5 (commencing with Section 51210) of Chapter 5 of, and Chapter 6.8 (commencing with Section 51341) of, Part 3 of Division 31 of, the Health and Safety Code, relating to housing.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 50516 of the Health and Safety Code is amended to read:

50516. (a) The Housing Predevelopment Loan Fund established

pursuant to this section and the Land Purchase Fund established pursuant to Section 50701 are hereby combined and renamed the Rural Predevelopment Loan Fund.

(b) Notwithstanding Section 13340 of the Government Code, all money in the fund, including any interest on loans made from the fund, is continuously appropriated to the department for carrying out the purposes of this chapter and to repay, with interest, transfers made to the fund pursuant to subdivision (b) of Section 50748.1 in accordance with the terms of the transfer. The fund shall be a revolving loan fund which shall be used to make predevelopment loans and land purchase loans to eligible sponsors for assisted housing in rural areas, for occupancy by persons of low income.

(c) All interest, dividends, and pecuniary gains from investments or deposits of moneys in the fund shall accrue to the fund, notwithstanding Section 16305.7 of the Government Code.

There shall be paid into the fund all of the following:

(1) Any moneys appropriated and made available by the Legislature for the purposes of the fund.

(2) Any moneys which the department receives in repayment of loans made from the fund, including any interest on loans made from the fund.

(3) Any other moneys which may be made available to the department for the purposes of this chapter from any other source.

SEC. 2. Section 50531 of the Health and Safety Code is amended to read:

50531. (a) The Urban Housing Development Loan Fund established in the State Treasury is hereby renamed the Urban Predevelopment Loan Fund.

(b) Notwithstanding Section 13340 of the Government Code, all money in the fund, including any interest on loans made from the fund, is hereby continuously appropriated to the department for carrying out the purposes of this chapter and for repaying any transfer made to the fund pursuant to Section 50748.1, together with interest as provided in that section. The fund shall be a revolving loan fund which shall be used to make predevelopment loans and land purchase loans to eligible sponsors for assisted housing in urban areas, for occupancy primarily by persons of low income.

(c) All interest, dividends, and pecuniary gains from investments or deposits of moneys in the fund shall accrue to the fund, notwithstanding Section 16305.7 of the Government Code.

There shall be paid into the fund all of the following:

(1) Any moneys appropriated and made available by the Legislature for the purposes of the fund.

(2) Any moneys which the department receives in repayment of loans made from the fund, including any interest on loans made from the fund.

(3) Any other moneys which may be made available to the department for the purposes of this chapter from any other source.

SEC. 3. Section 50744 is added to the Health and Safety Code, to

read:

50744. Where a local finance entity or local public entity is authorized to receive payments from the annuity fund established pursuant to Section 50748, under a written agreement with the department, the local finance entity or local public entity may with the approval of the department designate in writing either the project sponsor or the sponsor's approved management agent for the rental housing development as a substitute payee for these payments. Upon the approval of the department and the local finance entity or local public entity, the department shall make the authorized payments directly to the designated payee until the entity and the department agree to revoke or rescind the designation.

SEC. 4. Section 50748.1 of the Health and Safety Code is amended to read:

50748.1. The department shall from time to time direct the State Treasurer to invest moneys set aside or otherwise deposited in the annuity fund established by Section 50748 as an account in the Rental Housing Construction Fund, which are not required for its current needs, in the eligible securities specified in Section 16430 of the Government Code that are designated by the department. The department may direct the State Treasurer to deposit moneys in interest-bearing accounts in state or national banks or other financial institutions having principal offices in this state, or in other investments which are consistent with state policy and achieve returns adequate to fulfill the requirements of this chapter. The department may alternatively require the transfer of moneys in the annuity fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3, Part 2, Division 4, Title 2 of the Government Code.

All interest or other increment resulting from the investment or deposit shall be deposited in the annuity fund account, notwithstanding Section 16305.7 of the Government Code. Moneys in the fund are not be subject to transfer to any other fund pursuant to Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code, except the Surplus Money Investment Fund.

(b) Upon request of the department, the Controller shall transfer from the annuity fund account in the Rental Housing Construction Fund, an aggregate amount not exceeding five million dollars ($5,000,000) to the Rural Predevelopment Loan Fund and the Urban Predevelopment Loan Fund. The department shall determine the respective amount to be deposited in these funds.

Transfers made pursuant to this subdivision shall be treated as advances and shall be repaid, with interest specified in this subdivision, within three years of the effective date of transfer of the moneys, except that the department may defer repayment if (1) the balance of moneys in the annuity fund account is sufficient to meet current or anticipated financial obligations and (2) the financial

integrity of any component or fund of the Rental Housing Construction Program is not at risk. Moneys advanced pursuant to this subdivision shall be repaid with interest at the rate of 7 percent.

SEC. 5. Section 50759 of the Health and Safety Code is repealed.

SEC. 6. Section 50759 is added to the Health and Safety Code, to read:

50759. With respect to assisted units developed pursuant to this article, the local public entity shall do all of the following:

(a) Ensure the provision of affordable rents.

(b) Ensure that the incomes of tenants are recertified annually.

(c) Ensure that upon income recertification rents are adjusted and take effect within 30 days of adjustment.

(d) Determine standards for, and ensure fair procedures for, the selection of tenants by housing sponsors or other management designated pursuant to Section 50758 to ensure occupancy by eligible households consistent with the requirements of Sections 50736 and 50739.

(e) Regulate the terms of tenant occupancy agreements.

SEC. 7. Section 50767 of the Health and Safety Code is repealed.

SEC. 8. Section 50767 is added to the Health and Safety Code, to read:

50767. With respect to assisted units developed and constructed pursuant to this article, the local housing authority shall, with the approval of the department:

(a) Ensure the provision of affordable rents.

(b) Ensure that the incomes of tenants are recertified annually.

(c) Ensure that upon income recertification rents are adjusted and take effect within 30 days of adjustment.

(d) Determine standards for and ensure fair procedures for, the selection of tenants by housing sponsors or other management designated pursuant to Section 50758 to ensure occupancy by eligible households consistent with the requirements of Sections 50736 and 50739.

(e) Regulate the terms of tenant occupancy agreements.

SEC. 9. Section 50770 of the Health and Safety Code is amended to read:

50770. Four percent of the funds appropriated for the purposes of this chapter shall be set aside in a Management Reserve Account in the Rental Housing Construction Fund, which is hereby created. All interest or other increment resulting from investment or deposit of moneys in the account shall be deposited in the account.

The department may expend moneys in the account to provide debt service payments or bid at a foreclosure sale, where a loan that is superior to the loan of the department is in default, in order to protect the security or regulatory interest of the department against default, so that, to the extent feasible, the rental charges to eligible households remain affordable. The department may provide assistance from the fund to a rental housing development if the agency or local finance entity affirmatively demonstrates that

assistance is necessary to avoid jeopardizing the fiscal integrity of the rental housing development while maintaining affordable rents and if the department determines that assistance is necessary to offset unavoidable increases in costs to protect the security or regulatory interests of the department.

SEC. 10. Section 50901 of the Health and Safety Code is amended to read:

50901. The agency shall be administered by a board of directors consisting of 11 voting members, including a chairperson selected by the Governor from among his or her appointees. The State Treasurer, the Secretary of the Business, Transportation and Housing Agency, and the Director of Housing and Community Development, or their designees, shall be members, in addition to six members appointed by the Governor, one member appointed by the Speaker of the Assembly, and one member appointed by the Senate Rules Committee. The Director of Finance, the Director of the State Office of Planning and Research, and the executive director of the agency shall serve as nonvoting ex officio members of the board.

SEC. 11. Section 50902 of the Health and Safety Code is amended to read:

50902. (a) Appointed members of the board shall be able persons broadly reflective of the economic, cultural, and social diversity of the state, including ethnic minorities and women. However, it is not intended that formulas or specific ratios be applied in order to achieve that diversity.

(b) The Governor shall select four of his or her six appointees from among the following categories: (1) an elected official of a city or county engaged in the planning or implementation of a housing, housing-assistance, or housing-rehabilitation program; (2) a person experienced in residential real estate in the savings and loan, mortgage banking, or commercial banking industry; (3) a person experienced as a builder of residential housing; (4) a person experienced in organized labor in the residential construction industry; (5) a person experienced in the management of rental or cooperative housing occupied by lower income households; (6) a person experienced in manufactured housing finance and development; and (7) a person representing the public. Not more than one person from each category may serve on the board at any one time, except that two members may be appointed by the Governor to represent the public.

(c) The Governor shall also appoint two members who are residents of rental or cooperative housing financed by the agency or who are persons experienced in counseling, assisting, or representing tenants.

(d) At least one of the members appointed by the Governor shall be a resident of a rural or nonmetropolitan area.

(e) The Senate Rules Committee and the Speaker of the Assembly shall each appoint a person representing the public.

The term of members of the board shall be six years. Any person

appointed to fill a vacancy on the board shall serve only for the remainder of the unexpired term. Members of the board shall, subject to continued qualification, be eligible for reappointment. If a member of the board ceases to meet the qualifications specified in this section, the membership of that person on the board shall be terminated.

SEC. 12. Section 50904 of the Health and Safety Code is amended to read:

50904. The representation of varied interest groups on the board shall be deemed essential to obtain information for the development of policy and decisions of the board. It shall not be a conflict of interest for an official of any local public entity or a resident of any housing development, or a director, officer, stockholder, or employee of any savings and loan institution, investment banking firm, brokerage firm, commercial bank or trust company, architectural firm, insurance company, labor union, or any other person, association, or corporation to serve as a member of the board. If any board member has a financial interest in any matter before the board for a decision, that interest shall be disclosed as a matter of official public record. The board member shall not attempt to influence, participate in deliberations concerning, or vote as to that matter.

Violation of this section constitutes grounds for disqualification from office as a board member. Violation of the disclosure requirements of this section constitutes a misdemeanor under Section 91000 of the Government Code.

SEC. 13. Section 50905 of the Health and Safety Code is amended to read:

50905. (a) No officer or employee of the agency shall be employed by, hold any paid official relation to, or have any financial interest in, any housing sponsor or any housing development financed or assisted under this part. No real property to which a member of the board or an officer or employee of the agency holds legal title or in which the person has any financial interest shall be purchased by the agency or sold by the member of the board or officer or employee of the agency to a housing sponsor for a housing development to be financed under this part.

Any violation of this section shall be a conflict of interest which shall be grounds for disqualification of the member from the board or the officer or employee of the agency from his or her office or employment with the board or agency.

(b) Except as provided by subdivision (c), the following actions shall be voidable in the discretion of the agency:

(1) Any purchase by the agency of real property in which a member of the board or an officer or employee of the agency has legal title or a financial interest.

(2) Any commitment by the agency to provide financial assistance to a housing sponsor in which a member of the board or officer or employee of the agency is employed, holds any official

relation, or has any financial interest.

(3) Any commitment by the agency to provide financial assistance to a housing sponsor to which real property has been or is transferred for a housing development to be financed under this part, if a member of the board or officer or employee of the agency has or has had legal title or any financial interest in the real property.

(c) Any commitment by the agency to provide financial assistance under the circumstances specified in paragraph (2) or (3) of subdivision (b) shall not be voidable following release of the funds.

(d) Notwithstanding the provisions of this section and Section 50904, any conflict of interest by a member of the board or officer or employee of the agency shall not affect the validity of any bonds or insurance issued pursuant to this division.

(e) Notwithstanding the provisions of this section, agency employees, board members, and officers may, if not acting as an investor and if otherwise eligible, participate in owner-occupied single-family financing and insurance programs operated by the agency.

SEC. 14. Section 50907 of the Health and Safety Code is amended to read:

50907. The Governor shall appoint a chairperson from among members of the board, who, when present, shall preside at meetings of the board. The term of the chairperson shall be five years, but shall terminate earlier upon expiration of the chairperson's term under Section 50902 without reappointment to the board.

SEC. 15. Section 50908 of the Health and Safety Code is amended to read:

50908. The Governor shall, subject to confirmation by the Senate, appoint an executive director of the agency, who shall, subject solely to supervision by the board, administer and direct the day-to-day operations of the agency. The term of office of the executive director is five years. Except as provided in this part, the board shall from time to time determine the total number of authorized employees within the agency and shall determine the salaries of those employees of the agency whose salaries are not paid from moneys appropriated to the agency from the General Fund.

SEC. 16. Section 50909 of the Health and Safety Code is amended to read:

50909. The compensation of the executive director shall be established by the board in an amount which is reasonably necessary, in the discretion of the board, to attract and hold a person of superior qualifications. However, the salary of the executive director shall not exceed the salary of the Secretary of the Business, Transportation and Housing Agency. Members of the board shall not receive a salary but shall be entitled to a per diem allowance of one hundred dollars ($100) for each day's attendance at a meeting of the board or a meeting of a committee of the board, not to exceed three hundred dollars ($300) in any month, and reimbursement for expenses incurred in the performance of their duties under this part, including

travel and other necessary expenses.

SEC. 17. Section 50911 of the Health and Safety Code is amended to read:

50911. Notwithstanding Sections 11042 and 11043 of the Government Code, the executive director may employ as general counsel for the agency an attorney at law licensed in this state. The general counsel shall advise the board, the chairperson, and the executive director, when so requested, with regard to all matters in connection with the powers and duties of the agency and the board members and officers thereof. The general counsel shall serve as secretary to the board and shall perform all duties and services as general counsel to the agency which the agency may require of such person.

Except as provided in Section 11040 of the Government Code, the Attorney General shall represent and appear for the people of the State of California and the agency in all court proceedings involving any question under this division or any order or act of the agency. However, the agency may also employ private counsel to assist in any court proceeding.

Notwithstanding Sections 11042 and 11043 of the Government Code, the executive director may appoint as bond counsel for the agency an attorney or attorneys. Nothing in this section or any other provision of law shall preclude the appointment of more than one attorney to serve as bond counsel, however, at all times at least one attorney shall be licensed to practice law in this state. If the agency appoints more than one bond counsel for a bond issue, combined fees paid to all bond counsel shall not exceed those fees which would have been paid had only one bond counsel been appointed.

Under the authority of this section, the president may appoint or retain an attorney or attorneys to undertake other appropriate legal studies and assignments not in conflict with this section.

SEC. 18. Section 50916 of the Health and Safety Code is amended to read:

50916. All meetings of the board and of all committees of the board including those committees whose membership constitutes less than a quorum of the board shall be open and public and all persons shall be permitted to attend and address the board or its committees, except when the meetings are held as executive sessions as authorized by Section 11126 of the Government Code.

SEC. 19. Section 50953 of the Health and Safety Code is amended to read:

50953. No provision of this division shall be construed as a restriction or limitation upon any powers which the agency or any local public entity might otherwise have under any laws of this state, and this part is cumulative with respect to these powers. This division shall be deemed to provide a complete, additional, and alternative method for doing the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds under this

part need not comply with the requirements of any other law applicable to the issuance of bonds, and in the construction or acquisition of a housing development or a residential structure pursuant to this division, the agency need not comply with the requirements of any other law applicable to construction or acquisition of public works, except as specifically provided in this division. The agency shall adopt regulations for review of construction contracts for the construction or rehabilitation of housing developments and residential structures financed under this division and shall require that on construction of this housing which is financed by a construction loan from the agency, other than mutual self-help housing developments, all workers employed in the construction, exclusive of maintenance work, shall be paid not less than the general prevailing rate or per diem wages for work of a similar character in the locality in which the construction is performed, and not less than the prevailing rate of per diem wages for holiday and overtime work. The agency shall determine or require determination of the general prevailing rate of per diem wages in accordance with the standards set forth in Section 1773 of the Labor Code. Apprentices shall be employed in the construction of housing developments in accordance with the regulations of the agency, which shall impose the same requirements as contained in Section 1777.5 of the Labor Code, except as to differences necessitated by the methods of awarding construction contracts for housing developments financed under this division.

SEC. 20. Section 50954 of the Health and Safety Code is amended to read:

50954. The exercise of the powers specified in this division will be in all respects for the benefit of the people of the state, for their well-being and prosperity, and for the improvement of their social and economic conditions, and the agency shall not be required to pay any tax or assessment on any property owned by the agency under the provisions of this division or upon the income therefrom. Any bonds issued by the agency under the provisions of this division, their transfer, and the income therefrom shall at all times be free from taxation by the state or any political subdivision or other instrumentality of the state, excepting inheritance and gift taxes.

SEC. 21. Section 51000 of the Health and Safety Code is amended to read:

51000. The California Housing Finance Fund is hereby created in the State Treasury.

Construction loan funds may be transferred to the construction lender or to the contractor as necessary to meet draws for progress payments pursuant to rules and regulations of the agency.

Notwithstanding Section 13340 of the Government Code, all money in the fund is hereby continuously appropriated to the agency for carrying out the purposes of this part, and, notwithstanding Chapter 2 (commencing with Section 12850) of Part 2.5 of Division 3 of Title 2 of the Government Code, or the provisions of Sections

11032 and 11033 of the Government Code, and except as provided in this part, expenditure of the fund shall not be subject to the supervision or approval of any other officer or division of state government. However, the agency's budget shall be reviewed as provided in Section 50913. The agency may pledge any or all of the moneys in the fund as security for payment of the principal of, and interest on, and redemption premiums on, bonds issued pursuant to this part, and, for that purpose or as necessary or convenient to the accomplishment of any other purpose of the agency, may divide the fund into separate accounts. All moneys accruing to the agency pursuant to this part from whatever source shall be deposited in the fund.

SEC. 22. Section 51003 of the Health and Safety Code is amended to read:

51003. The agency shall, from time to time, direct the Treasurer to invest moneys in the fund which are not required for its current needs, including proceeds from the sale of any bonds, in any eligible securities specified in Section 16430 of the Government Code which the agency shall designate. The agency may direct the Treasurer to invest the moneys by entering into repurchase agreements or reverse repurchase agreements, which, for purposes of this section, shall mean agreements for the purchase or sale of eligible securities pursuant to which the seller or buyer agrees to repurchase or sell back the securities on or before a specified date and for a specified amount. The agency may direct the Treasurer to invest the moneys in investment agreements with corporations, financial institutions, or national associations within the United States which are rated by a nationally recognized rating service within the top three ratings of the service. For purposes of this section, investment agreements shall mean any agreement for the investment of moneys in the fund whether at fixed or variable interest rates, and may include, but not be limited to, repurchase agreements, notes, uncollateralized time deposits and certificates of deposit. The agency may direct the Treasurer to deposit moneys in interest-bearing accounts in state or national banks or other financial institutions having principal offices in this state.

Subject to any agreement with holders of particular bonds, in furtherance of the provisions of Section 51373, and to the extent permitted by law, the agency may also invest moneys of the fund in obligations or financial institutions as are permitted by board resolution. The agency may alternatively require the transfer of moneys in the fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

All interest or other increment resulting from such investment or deposit 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.

SEC. 23. Section 51004 of the Health and Safety Code is amended to read:

51004. The agency may utilize moneys which may be appropriated to the fund from time to time by the Legislature for effectuating its purposes, including, but not limited to, the establishment of reserves or contingency funds to be available for payments on the principal, interest, redemption premium, and sinking funds of any bonds of the agency and the direct payment of principal, interest, redemption premium, and sinking funds on the bonds of the agency.

SEC. 24. Section 51005.5 of the Health and Safety Code is repealed.

SEC. 25. Section 51006 of the Health and Safety Code is amended to read:

51006. The executive director of the agency shall immediately certify in writing to the Joint Legislative Audit Committee, the Joint Legislative Budget Committee, the Speaker of the Assembly, the Senate Rules Committee, and the Governor, if the agency is notified by the trustee in writing that moneys of the agency will not be sufficient to meet principal payments, sinking fund payments, and interest payments on bonds authorized under this part and to restore and maintain necessary bond reserve funds. However, certification pursuant to this section need not be made unless this insufficiency will result in an event of default under the respective bond resolution authorizing the bonds.

SEC. 26. Section 51050 of the Health and Safety Code is amended to read:

51050. The agency shall have all of the following powers:

(a) To sue and be sued in its own name.

(b) To have an official seal and to alter the same at pleasure.

(c) To have perpetual succession.

(d) To maintain offices at any place or places within the state which it may designate.

(e) To adopt, and from time to time amend and repeal, by action of the board, resolutions, rules, and regulations, not inconsistent with this part, to carry into effect the powers and purposes of the agency and the conduct of its business. Rules and regulations of the agency shall be adopted, amended, repealed, and published in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) Notwithstanding any other provision of law, to make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this part with any governmental agency, private corporation or other entity, or individual, and to contract with any local public entity for processing of any aspect of financing housing developments. Contracts made or executed under the authority of this part shall not be subject to any

provision of law requiring competitive bidding, but the agency shall take into consideration any applicable state policies respecting competitive bidding prior to letting a contract on a negotiated bid.

In exercising the powers set forth in this subdivision, the agency shall be subject to any applicable provisions of law requiring the supervision or approval of another division or officer of state government, except with respect to the following, which shall be exempt from these requirements:

(1) Contracts and instruments made or executed in connection with the issuance or marketing of the agency's bonds, including procurement of financial consultants, underwriters, actuaries, bond counsel, and computer and printing services related to the issuance or marketing of the bonds.

(2) Contracts and instruments relating to protection of the security interests of holders of the agency's bonds or the management, acquisition, or disposition of any property, funds, assets, or loans that are either acquired with the proceeds of any bonds or pledged or held in trust for the benefit of holders of the agency's bonds.

(3) Contracts and instruments made or executed pursuant to Chapter 5 (commencing with Section 51100).

(g) To acquire real or personal property, or any interest therein, on either a temporary or long-term basis in its own name by gift, purchase, transfer, foreclosure, a deed in lieu of foreclosure, lease, option, or otherwise, including easements or other incorporeal rights in property.

(h) To hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of any real or personal property or any interest therein; to hold, sell, assign, or otherwise dispose of any mortgage interest owned by it, under its control or custody, or in its possession; and, as applicable, to do any of the acts specified in this subdivision by public or private sale, with or without public bidding, notwithstanding any other provision of law.

(i) To release or relinquish any right, title, claim, lien, interest, easement, or demand however acquired, including any equity or right of redemption in real property foreclosed by it or acquired by it by a deed in lieu of foreclosure.

(j) To determine the terms and conditions of any mortgage instrument, deed of trust, or promissory note used or executed in conjunction with the financing of any housing development.

(k) To employ architects, engineers, attorneys, accountants, housing construction and financial experts, and such other advisers, consultants, and agents as may be necessary in its judgment and to fix their compensation.

(*l*) To provide advice, technical information, and consultative and technical service in connection with the financing of housing developments pursuant to this part.

(m) Notwithstanding any other provision of law, to insure or reinsure against any loss in connection with its property and other

assets, including mortgages and mortgage loans, in amounts, in the manner, and from those insurers as it deems desirable.

(n) To establish, revise from time to time, and charge and collect fees and charges in connection with loans made or insured by the agency.

(o) To borrow money and issue bonds, as provided in this part.

(p) To enter agreements and perform acts as are necessary to obtain and maintain federal housing subsidies for use in connection with housing developments.

(q) To provide bilingual staff and make available agency publications in a language, other than English, where necessary to effectively serve all groups for which those services or publications are made available.

(r) To require any individual, corporation, or other legal entity operating, managing, or providing maintenance services for a housing development or a residential structure to maintain a current certificate of qualification developed and approved by the agency.

(s) To do any and all things necessary to carry out its purposes and exercise the powers expressly granted by this part.

SEC. 27. Section 51055 of the Health and Safety Code is amended to read:

51055. The agency may purchase and sell construction loans, mortgage loans, property improvement loans, obligations secured by these loans, insurance on these loans, and participation therein.

SEC. 28. Section 51057 of the Health and Safety Code is repealed.

SEC. 29. Section 51066 of the Health and Safety Code is amended to read:

51066. For housing developments financed by a mortgage loan from the agency, the agency shall establish a grievance procedure or require housing sponsors to establish a grievance procedure, or both, for the purpose of resolving complaints by housing sponsors and tenants of housing sponsors and contractual disputes between two or more housing sponsors or between a housing sponsor and a tenant of the housing sponsor. Notwithstanding any other provision of law, no individual or family shall be evicted from a housing development unless the following requirements are met:

(a) The eviction is for good cause as defined by rules and regulations of the agency.

(b) Eviction proceedings shall be commenced by the giving of notice as required by Section 1946 of the Civil Code or Section 1161 or 1161a of the Code of Civil Procedure and served as provided by Section 1162 of the Code of Civil Procedure. The notice shall contain a statement of the cause for eviction and of the right of the tenant to a hearing and decision pursuant to regulations of the agency if a request for such a hearing is made to the landlord in writing within the period specified in Section 1946 of the Civil Code or Section 1161 of the Code of Civil Procedure, as the case may be.

(c) When the tenant so requests the landlord in writing within the period specified in Section 1946 of the Civil Code or Section 1161 of

the Code of Civil Procedure, as the case may be, a hearing, in accordance with procedures established pursuant to regulations of the agency, shall be held by an impartial individual or panel selected or approved by the agency and a decision rendered within two weeks after receipt by the landlord of the tenant's written request for a hearing. Good cause for eviction shall be established at the hearing by the weight of the evidence. Before a right to a hearing vests, the tenant shall pay rent for the two-week hearing period to the owner or to an escrow account of the agency, if not already paid.

A defendant in an unlawful detainer proceeding may assert as a defense the failure of the plaintiff or the agency to comply with the requirements of this section or regulations adopted pursuant to this section. A defendant in an unlawful detainer proceeding may assert as a defense that the findings at the hearing were not supported by the weight of evidence.

The costs of any hearing conducted pursuant to this section shall be assessed to, and paid by, the losing party as provided in regulations of the agency. If neither party prevails, the costs of the hearing shall be equitably apportioned.

As used in this section, "tenant" includes a resident shareholder of a cooperative housing development. Nothing in this section shall be construed as a limitation of the rights of a resident shareholder of a cooperative housing development.

SEC. 30. Section 51068 of the Health and Safety Code is repealed.

SEC. 31. Section 51068.5 of the Health and Safety Code is amended and renumbered to read:

51068. (a) Except as otherwise provided in subdivision (b) and notwithstanding the provisions of Sections 711, 711.5, and 1916.5 of the Civil Code, the agency shall not permit assumption of the obligation of any mortgage loan made pursuant to Chapter 5 (commencing with Section 51100) by a subsequent ineligible purchaser or transferee of the prior borrower. If the subsequent purchaser or transferee does not meet the agency's eligibility requirements, the agency shall require acceleration of repayment of the principal balance of the loan to be all due and payable upon the sale or transfer of the property.

(b) With respect to mortgage loans made prior to July 1, 1979, the agency may waive the requirements of subdivision (a) when necessary to permit participation in mortgage insurance, guarantee, or purchase programs, or when the provisions of subdivision (a) would interfere with the financial structuring or the administration of any bond financing program.

(c) The requirements of subdivision (a) may be waived pursuant to subdivision (b) with respect to any mortgage loan made on or after July 1, 1979, only if the loan is federally assisted or insured and the waiver is necessary to obtain the federal assistance or insurance. As a condition to authorizing assumption of a mortgage loan pursuant to this subdivision, the agency shall recast the repayment schedule for the remainder of the term of the loan by increasing the interest

to the current market rate at the time of assumption, or to any lower rate of interest which is the maximum allowed by an entity that provided any insurance or other assistance with respect to which a waiver was granted pursuant to this subdivision. Any additional increment of interest produced by increasing the rate of interest upon a mortgage loan pursuant to this subdivision shall be transmitted or forwarded to the agency for deposit in the California Housing Finance Fund.

(d) The agency may also waive the requirements of subdivision (a) if it determines that its application would result in undue hardship, that the failure to meet the agency's eligibility requirements resulted from circumstances beyond the mortgagor's control, and if the waiver is for a limited period of time as specified by the agency.

(e) The agency shall implement appropriate measures to assure compliance with this section.

(f) This section applies to all mortgage loans made by the agency pursuant to Chapter 5 (commencing with Section 51100), whether directly or through a qualified mortgage lender, and including mortgage loans made prior to September 22, 1979.

SEC. 32. Section 51069 of the Health and Safety Code is amended to read:

51069. The agency, after approving an application for mutual self-help housing, may make development loans and construction loans for land acquisition and development costs to eligible housing sponsors on terms and conditions and in amounts as it deems necessary to accomplish the purposes of this part. These development loans and construction loans may be interest free if sufficient surplus funds exist for that purpose and the loans can be made without jeopardizing the financial self-sufficiency of the agency or the adequacy of its reserves. Land acquired and housing developments financed pursuant to this section shall be sold or conveyed to eligible housing sponsors or for the purpose of developing other mutual self-help housing.

In making loans pursuant to this section, the agency, as an alternative to disbursing the loans directly to eligible housing sponsors or persons and families of low or moderate income, may establish procedures retaining the loans or portions thereof, and disburse those amounts directly to the person or entity performing a service, or providing goods, material, land or improvements.

SEC. 33. Section 51070 of the Health and Safety Code is amended to read:

51070. The agency shall require that qualified mortgage lenders do not substitute funds made available under this part for the lenders' own resources, without permission of the agency. Qualified mortgage lenders may provide financing under this part until the agency makes a finding that the lender is in violation of this section or decertifies the lender pursuant to Section 50094.

SEC. 34. Section 51103 is added to the Health and Safety Code,

to read:

51103. Prior to the commitment of moneys under this part for a mortgage loan on a housing development as provided in Article 1 (commencing with Section 51100), Article 2 (commencing with Section 51125), Article 3 (commencing with Section 51150), and Article 4 (commencing with Section 51175), the agency shall take adequate measures to assure (a) the economic feasibility of the housing development, (b) the financial eligibility of the housing sponsors and tenants, (c) the consistency of the proposed housing developement with the current housing objectives of the agency, (d) the sufficiency of access of the housing development to supporting social services, public mass transit services and other transportation, schools, employment, and retail merchants, and (e) that the location of the proposed housing development is consistent with the agency's policies of dispersing housing developments throughout communities and of avoiding undue concentration of lower income households. Wherever possible, the agency shall verify these facts before financing is committed.

In providing for dispersal of housing developments, the agency shall consider economic feasibility, which shall be determined in light of all relevant factors, including the assistance programs and funds which could be utilized to reduce costs. Nothing in this section shall prohibit the agency from financing housing developments in neighborhood preservation areas in a manner that would otherwise be in conflict with the agency's policies respecting dispersal of housing developments or concentration of lower income households, where necessary to accomplish the purposes for which financing or loan insurance is made available by the agency in the area.

SEC. 35. Section 51127 of the Health and Safety Code is amended to read:

51127. The agency may insure or guarantee any obligation held by the agency and secured by a mortage on a housing development or residential structure for the purpose of increasing its acceptability or value for sale or as security for other obligations. The agency may also insure or guarantee any loan, or participation in a loan, for rehabilitation or home improvement which is insured by an agency or instrumentality of the United States and which is held by the agency. Nothing in this section shall, however, be construed as authorizing the creation of a debt or liability of the state within the meaning of Section 1 of Article XVI of the State Constitution.

SEC. 36. 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 this article, except pursuant to an agreement between the agency and the qualified mortgage lender. The agreements shall include the following:

(a) A maximum interest rate that can be charged for construction loans or mortgage loans.

(b) A specification of the requirements of loans authorized by this

part.

(c) Standards for mortgage servicing and foreclosure practices, including programs of forbearance and recasting for mortgages in default.

SEC. 37. Section 51200 of the Health and Safety Code is amended to read:

51200. With respect to housing developments financed by a mortgage loan from the agency, the agency shall:

(a) Prescribe uniform systems of accounts and records for rental and cooperative housing developments and require the housing sponsors to make reports and give answers to specific questions on such forms and at such times as may be necessary for the purposes of this part.

(b) Establish minimum reserves to be maintained by nonprofit and limited-dividend housing sponsors of rental and cooperative housing developments.

(c) Fix and alter from time to time a schedule of rents such as may be necessary to provide residents of rental and cooperative housing developments who are lower and very low income households with affordable rents to the extent consistent with the maintenance of the financial integrity of the housing developments and to provide profits to housing sponsors subject to the limitations of Section 51202. Income from commercial facilities constituting a portion of a housing development or residential structure financed pursuant to this part shall, to the extent they receive the benefit of below-market-interest financing from the agency, assist in the support of appurtenant residential facilities. No housing sponsor shall increase the rent charged on any restricted rental or cooperative unit of a housing development without the prior permission of the agency, which shall be given only if the housing sponsor affirmatively demonstrates that the increase is required to defray necessary operating costs or avoid jeopardizing the fiscal integrity of the housing development or to provide the agreed rate of return with respect to additional equity money contributed by investors pursuant to Section 51202, and additional debt service and necessary operating costs with respect to increases in mortgage loans for improvements to the housing development deemed necessary by the agency.

Applications to the agency for permission to adjust rents shall include a statement of the existing and proposed rent for each unit, a detailed statement of the necessity and authority for the increase under this subdivision, and the extent to which rent increases would be paid by residents of restricted units and not offset by increased subsidy payments. Prior notice of any rent increase shall be given in writing as required by Section 1946 of the Civil Code. Prior to the time any rent increase is effective the housing sponsor shall notify every affected resident, in writing, of informal meetings with the housing sponsor to review the proposed rent increase and that each resident, upon request, will be provided the information submitted to the agency under this subdivision.

"Restricted," as used in this subdivision, means required to be made available for occupancy by lower income households or very low income households pursuant to an agreement between the agency and the housing sponsor.

(d) Determine standards for, and control selection by housing sponsors of, tenants and purchasers.

(e) Regulate the terms of occupancy agreements to be used in housing financed under this chapter.

(f) Provide bilingual services and publications, or require housing sponsors to provide bilingual services and publications, which are necessary to ensure informed access to housing financed pursuant to this part for persons and families of low or moderate income who have limited fluency in the English language.

SEC. 38. Article 5.5 (commencing with Section 51210) of Chapter 5 of Part 3 of Division 31 of the Health and Safety Code is repealed.

SEC. 39. Section 51251 of the Health and Safety Code is amended to read:

51251. Notwithstanding any other provision of law, the Department of General Services, any other state agency or officer authorized by law to convey real property of the state, and any local public entity may, in his or her or its discretion, from time to time sell, lease for a term not exceeding 99 years, grant, or convey to the agency or to a housing sponsor designated by the agency any real property and appurtenances thereto or any interest therein owned by the state or local public entity which the agency shall certify as necessary for its purposes. The certification of need shall be evidenced by a formal request from the executive director of the agency. Any sale, lease, grant, or conveyance pursuant to this section shall be made with or without consideration and upon terms and conditions which may be mutually agreed upon by the state or local public entity and the agency. However, before any sale, lease, grant, or conveyance pursuant to this section is made at less than fair market value, the agency shall make a finding that the difference between the consideration required and fair market value will inure primarily to the benefit of persons and families of low or moderate income living in a housing development or a residential structure.

SEC. 40. Section 51335 of the Health and Safety Code is amended to read:

51335. (a) (1) Not less than 20 percent of the total number of units in a multifamily rental housing development financed, or for which financing has been extended or committed, pursuant to this chapter from the proceeds of sale of each bond issuance of the agency shall be for occupancy on a priority basis by lower income households. If a multifamily rental housing development is located within a targeted area, as defined by Section 143(j) of Title 26 of the United States Code, not less than 15 percent of the total number of units financed, or for which financing has been extended or committed pursuant to this chapter, shall be for occupancy on a priority basis by lower income households. Not less than one-half of

the units required for occupancy on a priority basis by lower income households shall be for occupancy on a priority basis for very low income households.

The rental payments on the units required for occupancy by very low income households paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed 30 percent of 50 percent of area median income. If the sponsor elects to establish a base rent for all or part of the units for lower income households and very low income households, the base rents shall be adjusted for household size. In adjusting rents for household size, the agency shall assume that one person will occupy a studio unit, two persons will occupy a one-bedroom unit, three persons will occupy a two-bedroom unit, four persons will occupy a three-bedroom unit, and five persons will occupy a four-bedroom unit.

(2) The local agency issuing permits for the development of the multifamily rental housing development shall consider opportunities to contribute to the economic feasibility of the units and to the provision of units for very low income households through concessions and inducements such as the following:

(A) Reductions in construction and design requirements.

(B) Reductions in setback and square footage requirements and the ratio of vehicular parking spaces that would otherwise be required.

(C) Granting density bonuses.

(D) Providing expedited processing of permits.

(E) Modifying zoning code requirements to allow mixed use zoning.

(F) Reducing or eliminating fees and charges for filing and processing applications, petitions, permits, planning services, water and sewer connections, and other fees and charges.

(G) Reducing or eliminating requirements relating to monetary exactions, dedications, reservations of land, or construction of public facilities.

(H) Other financial incentives or concessions for the multifamily rental housing development which result in identifiable cost reductions, as determined by the agency. The agency shall ensure that the local agency issuing permits for the development considers its responsibilities under this section and makes a good faith effort to enhance the feasibility of the project and to provide housing for lower income households and very low income households.

(3) The agency shall not permit a selection criteria to be applied to certificate holders under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) that is any more burdensome than the criteria applied to all other prospective tenants.

(4) It is the intent of the Legislature that the agency finance projects that assist in meeting the urgent need for providing shelter for lower income households, very low income households, and

persons and families of low or moderate income. To that end, the quality of materials and the amenities provided should not be excessive so as to hinder the prospect of achieving the stated goal. The Legislature finds and declares that the design standards utilized by the agency in the past including, but not limited to, the design requirements adopted to govern the new construction program under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), are substantially in excess of those required for a decent, healthy, and safe residential unit and intends, by the amendment adding this paragraph to this section by the Statutes of 1985, that the agency finance multifamily rental developments with substantially less costly design requirements than those required by the agency prior to January 1, 1986.

(5) It is the intent of the Legislature that the agency finance projects that assist in meeting the urgent need for providing shelter for families. To that end, developments with three- and four-bedroom units affordable to larger families shall have priority over competing developments.

(b) As a condition of financing pursuant to this chapter, the housing sponsor shall enter into a regulatory agreement with the agency providing that units reserved for occupancy by lower income households remain available on a priority basis for occupancy until the bonds are retired. The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the housing sponsor and, notwithstanding any other provision of law, these burdens of the regulatory agreement shall run with the land. The regulatory agreement shall be recorded in the office of the county recorder of the county in which the multifamily rental housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the agency as grantee.

(c) The agency shall ensure that units occupied by lower income households are of comparable quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants.

(d) (1) The agency shall give priority to processing construction loans and mortgage loans or may take other steps such as reducing loan fees for multifamily rental housing developments which incorporate innovative and energy-efficient techniques which reduce development or operating costs and which have the lowest feasible per unit cost, as determined by the agency, based on efficiency of design, the elimination of improvements that are not required by applicable building standards, or a reduction in the amount of local fees imposed on the development.

(2) The agency shall give equal priority to processing construction loans and mortgage loans or may take other steps such as reducing loan fees on multifamily rental housing developments which do any of the following:

(A) Utilize federal housing or development assistance.

(B) Utilize redevelopment funds or other local financial assistance, including, but not limited to, contributions of land, or for which local fees have been reduced.

(C) Are sponsored by a nonprofit housing organization.

(D) Provide a significant number of housing units, as determined by the agency, as part of a coordinated jobs and housing plan adopted by a local government.

(E) Exceed a ratio whereby 20 percent of the units are reserved for occupancy by lower income households, or whereby 10 percent of the units are reserved for occupancy by very low income households, or which provide units for lower income households or very low income households for the longest period of time beyond the minimum number of years.

(e) Notwithstanding any other provision of law, any mortgage which encumbers a multifamily rental housing development as security for an obligation to the agency shall have priority over any covenant, condition, restriction, or other limitation or agreement imposed on the housing development as a condition of qualifying it for any development, construction, or rehabilitation permit or approval or for any financial assistance. However, the agency may require subordination of a mortgage to the regulatory agreement specified in subdivision (b) to serve the purposes of this part.

(f) (1) New and existing rental housing developments may be syndicated after prior written approval of the agency. The agency shall grant that approval only after the agency determines that the terms and conditions of the syndication comply with this section.

(2) The terms and conditions of the syndication shall not reduce or limit any of the requirements of this chapter or regulations adopted or documents executed pursuant to this chapter. No requirements of the state shall be subordinated to the syndication agreement. A syndication shall not result in the provision of fewer assisted units, or the reduction of any benefits or services, than were in existence prior to the syndication agreement.

(g) At the option of the agency, the amendments to this section made by Chapter 907 of the Statutes of 1983 may be made applicable to any multifamily rental housing development financed by the issuance, on or after September 3, 1982, of bonds authorized by this chapter.

SEC. 41. Section 51340 of the Health and Safety Code is amended to read:

51340. This chapter constitutes an alternative method to issue bonds for making construction loans and mortgage loans for multifamily rental housing pursuant to the provisions of this chapter.

SEC. 42. Chapter 6.8 (commencing with Section 51341) of Part 3 of Division 31 of the Health and Safety Code is repealed.

SEC. 43. Section 51351 of the Health and Safety Code is amended and renumbered to read:

51104. Notwithstanding any other provisions of this part, only the

following types of housing developments and residential structures are eligible for mortgage loans made with the proceeds of bonds:

(a) Housing developments and residential structures financed with bonds of the agency guaranteed by the federal government.

(b) Housing developments and residential structures financed with bonds of the agency that are guaranteed, or the time payment of principal and interest of which is insured, by an agency of the state or by a private insuring entity authorized to engage in that business.

(c) Housing developments and residential structures, the mortgage loans on which presently are or are expected to be guaranteed, insured, or coinsured by the federal government.

(d) Housing developments and residential structures, the bonds or mortgage loans on which are presently, or are expected to be, insured or guaranteed in whole or in part by an agency of the state, including the California Housing Finance Agency, a political subdivision of the state, or by a private insuring entity authorized to engage in that business, or by any combination thereof, in percentages determined by the agency.

(e) Housing developments and residential structures financed by a loan made by the agency to a qualified mortgage lender, if both of the following conditions are met:

(1) The loan to the qualified mortgage lender is a general obligation of the mortgage lender.

(2) The qualified mortgage lender is a member of, or a subsidiary of a member of, the Federal Deposit Insurance Corporation or of the Federal Savings and Loan Insurance Corporation.

(f) Housing developments and residential structures financed by tax-exempt bonds for which a bond reserve fund is created which complies with the terms and conditions of the agreement or agreements with agency bondholders.

SEC. 44. Section 51352 of the Health and Safety Code is amended to read:

51352. Except as may otherwise be expressly provided by resolution of the agency, every issue of its bonds shall be general obligations of the agency payable out of any assets, revenues, or moneys of the agency, subject only to any agreements with the holders of particular bonds pledging any particular assets, revenues, or moneys.

SEC. 45. Section 51650 of the Health and Safety Code is amended to read:

51650. The agency shall, with respect to the implementation of this part and notwithstanding any other provision of law, have the general powers set forth in Sections 51050 and 51058 and, in addition, may do any and all things necessary to carry out its purposes and exercise the powers expressly granted by this part. The agency shall develop and maintain complete and current statistics and other information with respect to the loan insurance program, including, but not limited to, (1) mortgage arrearages, defaults, and foreclosures on insured loans, (2) expenses incurred as a result of

such arrearages, defaults, and foreclosures, and (3) the extent of displacement caused by availability of insured loans. The information shall be provided in the agency's annual report as required by Section 51035.

SEC. 46. Section 51654 of the Health and Safety Code is amended to read:

51654. Notwithstanding Chapter 2 (commencing with Section 12850) of Part 2.5 of Division 3 of Title 2 of the Government Code, Article 2 (commencing with Section 13320) of Chapter 3 of Part 3 of that division, or any other provision of law, expenditure of the insurance fund shall not be subject to the supervision or approval of any other officer or division of state government. However, the agency's budget respecting the insurance fund shall be prepared and reviewed in accordance with Section 50913.

SEC. 47. Section 51655 of the Health and Safety Code is amended to read:

51655. The agency shall, from time to time, direct the State Treasurer to invest moneys in the insurance fund which are not required for its current needs in eligible securities designated by the agency from among those specified in Section 16430 of the Government Code or as otherwise permitted by law. The agency may direct the State Treasurer to deposit moneys in the insurance fund in interest-bearing accounts in state or national banks or other financial institutions having principal offices in this state. To the extent permitted by law, the agency may invest moneys in the fund in obligations of financial institutions as permitted by board resolution. The agency may also require the transfer of moneys in the insurance fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

All interest or other increment resulting from such investment shall be deposited in the insurance fund, notwithstanding Section 16305.7 of the Government Code. Moneys in the insurance fund shall not be subject to transfer to any other fund pursuant to Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code, except the Surplus Money Investment Fund as provided in this section.

SEC. 48. Section 51659 of the Health and Safety Code is amended to read:

51659. (a) The obligation of the agency and of the state to pay any insurance benefit pursuant to contracts of insurance insuring loans or bonds shall not exceed amounts deposited in the insurance fund which are made available therefor under the respective contracts of insurance. Nothing in this part shall require the Legislature to appropriate moneys from the General Fund in the State Treasury to the Housing Insurance Fund on account of these obligations. The insurance of loans or bonds under the provisions of this part shall not directly, indirectly, or contingently obligate the

state or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

(b) All contracts of insurance insuring loans or bonds pursuant to this part shall contain on the face thereof a statement to the following effect: "Neither the faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of or interest on this contract of insurance."

(c) Moneys in the insurance fund may not be transferred to any other fund of the agency except as necessary to pay the expenses of operating the program of loan and bond insurance authorized by this part, nor shall the agency utilize any moneys under the direction and control of the agency, other than moneys in the insurance fund, to satisfy liabilities arising from contracts of insurance authorized by this part.

SEC. 49. Section 51803 of the Health and Safety Code is repealed.

SEC. 50. The amendments to Sections 51335 and 51340 of the Health and Safety Code proposed by Sections 40 and 41 of this act shall not become operative if Chapter 6.7 (commencing with Section 51325) of Part 3 of Division 31 of the Health and Safety Code is repealed on January 1, 1988, by Section 51326 of the Health and Safety Code.

SEC. 51. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 1035

An act to amend Sections 16600, 16601, 16602, 16603, 16604, 16605, 16606, 16607, 16611, 16613, 16614, 16615, 16621, 16626, 16630, 16632, 16633, and 16634 of the Government Code, relating to investments.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 16600 of the Government Code is amended to read:

16600. As used in this chapter, "eligible savings and loan association" means a state or federal savings association, as defined in Section 5102 of the Financial Code, insured by the Federal Savings and Loan Insurance Corporation, and "eligible credit union" means a state or federal credit union insured by the National Credit Union Administration, located in this state, and selected by the Treasurer

for the safekeeping of money belonging to or in the custody of the state. Such a savings and loan association is eligible to receive deposits only to the extent it furnishes the security required by this chapter.

SEC. 2. Section 16601 of the Government Code is amended to read:

16601. Notwithstanding Section 16502, all other money in the State Treasury or under the control of the Treasurer belonging to or in the custody of the state, shall, so far as possible, be deposited by the Treasurer to the credit of the state in eligible banks as defined in Section 16500, eligible savings and loan associations, and eligible credit unions. Any sum in the State Treasury so deposited is deemed to be in the State Treasury. Any other amount so deposited is deemed to be held in trust by the Treasurer.

SEC. 3. Section 16602 of the Government Code is amended to read:

16602. Subject to the limitations of Article 4.5 (commencing with Section 16480) of Chapter 3, the Treasurer shall determine what amounts of money shall be deposited as deposits in savings and loan associations, and credit unions, and the rates of interest to be received.

SEC. 4. Section 16603 of the Government Code is amended to read:

16603. Subject to the applicable contract, the Treasurer may call in money from deposits in savings and loan associations and credit unions and place it in demand deposits in banks when necessary to meet current requirements.

SEC. 5. Section 16604 of the Government Code is amended to read:

16604. Deposits in any savings and loan association or credit union shall not exceed the total of its net worth.

SEC. 6. Section 16605 of the Government Code is amended to read:

16605. Notwithstanding Section 16506, all money belonging to or in the custody of the state under the control of any state officer or employee, other than the Treasurer, except petty cash funds authorized by the Department of Finance, shall be deposited in state or national banks in this state, state and federal savings associations in this state, as defined in Section 5102 of the Financial Code, and credit unions in this state, and under conditions as the Director of Finance prescribes. Savings and loan associations or credit unions receiving deposits shall be required to deposit with the Treasurer the same security as is required by this chapter for deposits made by the Treasurer.

Savings and loan associations or credit unions receiving deposits of money from a county advanced or apportioned to it pursuant to Section 4481 of the Food and Agricultural Code shall be required to secure deposits in accordance with Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5.

SEC. 7. Section 16606 of the Government Code is amended to read:

16606. A state officer is not liable on his or her official bond for losses caused by the failure of a savings and loan association or credit union in which a deposit is made of money belonging to an inmate of a state institution, if the officer was required or permitted by law to act as a trustee or fiduciary with respect to the money and if he or she made the deposit in good faith and in accordance with law.

SEC. 8. Section 16607 of the Government Code is amended to read:

16607. The Treasurer is not responsible for any money deposited in a savings and loan association or credit union pursuant to this chapter, and while it remains so deposited.

SEC. 9. Section 16611 of the Government Code is amended to read:

16611. To be eligible to receive and retain deposits, a savings and loan association and credit union shall deposit with the Treasurer as security for deposits, securities specified in Section 16612, and approved by the Treasurer, in an amount in value at least 10 percent in excess of the amount deposited with the savings and loan association or credit union.

SEC. 10. Section 16613 of the Government Code is amended to read:

16613. If it appears to him or her necessary for the security of the state, the Treasurer shall require as a condition of eligibility that a savings and loan association or credit union furnish an indemnity bond approved by the Treasurer, conditioned against loss by any depreciation in value that may occur in securities deposited as security for the safekeeping and prompt payment of deposits. The sureties shall not be stockholders of the principal.

SEC. 11. Section 16614 of the Government Code is amended to read:

16614. In lieu of deposits of securities, any otherwise eligible savings and loan association or credit union may deposit with the Treasurer bonds of admitted surety insurers as security for demand and time deposits.

SEC. 12. Section 16615 of the Government Code is amended to read:

16615. An admitted surety insurer is not eligible as surety for deposits in any one savings and loan association or credit union in amounts in excess of 10 percent of the capital and surplus of the surety as shown in the preceding report issued by the United States Treasury Department.

SEC. 13. Section 16621 of the Government Code is amended to read:

16621. If any savings and loan association or credit union fails to pay all or any part of deposits on demand of the Treasurer, pursuant to the terms and conditions of the contract relating to the deposit that is to be withdrawn in whole or in part, the Treasurer shall

forthwith recover upon or convert the security therefor into money and disburse it according to law.

SEC. 14. Section 16626 of the Government Code is amended to read:

16626. With the consent of the savings and loan association or credit union owning securities deposited or to be deposited with him or her as security, the Treasurer may:

(a) Authorize any qualified trust company or the Federal Reserve Bank of San Francisco or any branch thereof or any state or national bank located in any city designated as a reserve or central reserve city by the Board of Governors of the Federal Reserve System or the Federal Home Loan Bank of San Francisco to receive as his or her agent deposits of any securities approved under this chapter.

(b) Place and maintain for safekeeping as a trust deposit with any qualified trust company, or with the Federal Reserve Bank of San Francisco or any branch thereof or the Federal Home Loan Bank of San Francisco any securities that have been received by him or her under this chapter.

(c) Whenever any qualified trust company accepts securities under paragraph (a) or (b) the trust company, with the prior approval of the Treasurer, may keep the securities for safekeeping with any state or national bank located in a city designated as a reserve or central reserve city by the Board of Governors of the Federal Reserve System.

SEC. 15. Section 16630 of the Government Code is amended to read:

16630. The Treasurer shall enter into contracts with savings and loan associations as in his or her judgment will be to the public advantage so to do. The contracts shall fix the duration of deposits and the rates of interest to be received, if any, the interest payment date, and provide conditions for their withdrawal, repayment, and security.

SEC. 16. Section 16632 of the Government Code is amended to read:

16632. The contracts covering deposits shall provide that the interest to be paid by the savings and loan association or credit union shall be paid upon the expiration of the certificate or certificates of deposit issued as a part of the contract. The contract may also provide for periodic interest payments during the term of the deposit. The contract governing deposits shall also provide that the amounts of interest shall be reported by the savings and loan association or credit union at the time of payment of the interest, by statement showing the balances or amounts of money of the state held by the association or credit union during the period and the amount of accrued interest thereon.

SEC. 17. Section 16633 of the Government Code is amended to read:

16633. The contracts shall be executed by the savings and loan associations and credit unions in triplicate. The Treasurer shall file

one copy of each contract with the Controller.

SEC. 18. Section 16634 of the Government Code is amended to read:

16634. At the time of depositing state money in any savings and loan association or credit union, designated as a depository, the Treasurer shall take and preserve a receipt, certificate of deposit, or any other evidence of the deposit as the Treasurer may require, stating the amount deposited and referring to the contract made between the depository savings and loan association or credit union and the Treasurer.

CHAPTER 1036

An act to add Section 11023.5 to the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 22, 1987 Filed with Secretary of State September 23, 1987]

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

SECTION 1. It is the intent of the Legislature to operate the public assistance program in an efficient manner. The Legislature recognizes that under the current public assistance program persons submitting documents requested by the county welfare departments are not provided with receipts to verify that the documents were provided to the welfare department. The Legislature recognizes that providing receipts is a very basic business practice and it should apply to public assistance programs. The Legislature recognizes that there are several counties which do provide receipts for documents left at the county welfare department and commends them on their fine practice.

SEC. 2. Section 11023.5 is added to the Welfare and Institutions Code, to read:

11023.5. (a) Any applicant or recipient of benefits under the Aid to Families with Dependent Children, Food Stamps, and Medi-Cal programs, who delivers a document which has been requested by the county welfare department shall, upon the applicant's or recipient's request, be provided with a written receipt indicating that the county welfare department has received the document. A notice which explains an applicant's and recipient's right to receipts upon request shall be prominently posted by the county welfare department at the location where the document is to be delivered. The receipt shall be issued at the time the document is delivered.

(1) A county which maintains a system of logging hand delivered documents is exempt from the requirements of this subdivision.

(2) County welfare departments which provide receipts for all hand delivered documents without a request by an applicant or

recipient shall be exempt from the notice posting requirement.

(b) The county welfare department shall only provide receipts for documents which have been delivered in person to a county welfare department employee other than the applicant's or recipient's regularly assigned caseworker and to the location in which or through which the caseworker conducts his or her business. Only one receipt is required for monthly income reports and their supporting documents which are hand delivered. Monthly income reports and other requested documents which have been mailed shall not be subject to the requirements of this section.

(c) In consultation with the County Welfare Directors Association and the Coalition of California Welfare Rights Organizations, the department shall develop the notice which informs applicants and recipients of the right to receipts for hand delivered documents and shall develop minimum guidelines for county receipt forms.

(d) As used in this section, "applicant or recipient" means an applicant or recipient of benefits under the Aid to Families with Dependent Children, Food Stamps, and Medi-Cal programs.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1037

An act to add Section 53080.15 to the Government Code, relating to school facilities.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 53080.15 is added to the Government Code, to read:

53080.15. (a) No fee, charge, dedication, or other requirement may be levied by any school district pursuant to Section 53080 upon any greenhouse or other space that is covered or enclosed for agricultural purposes, unless and until the district first complies with subdivisions (b) and (c).

(b) The school district governing board shall make a finding, supported by substantial evidence, of both of the following:

(1) The amount of the proposed fees or other requirements and

the location of the land, if any, to be dedicated, bear a reasonable relationship and are limited to the needs of the community for elementary or high school facilities caused by the development.

(2) The amount of the proposed fees or other requirements does not exceed the estimated reasonable cost of providing for the construction or reconstruction of the school facilities necessitated by the development projects from which the fees or other requirements are to be collected.

(c) In determining the amount of the fees or other requirements, if any, to be levied on the development of any structure as described in subdivision (a), the school district governing board shall consider the relationship between the proposed increase in the number of employees, if any, the size and specific use of the structure, and the cost of the construction. No fee, charge, dedication, or other form of requirement, as authorized under Section 53080, shall be applied to the development of any structure described in subdivision (a) where the governing board finds either that the number of employees is not increased as a result of that development, or that housing has been provided for those employees, to the extent of any increase, by their employer, against which housing a fee, charge, or dedication, or other form of requirement has been applied under Section 53080. In developing the finding described in this section, the governing board shall consult with the county agricultural commissioner or the county director of the cooperative extension service.

CHAPTER 1038

An act to add Section 1373.14 to the Health and Safety Code, and to add Sections 10123.16, 10123.17, and 11512.177 to the Insurance Code, relating to health.

[Approved by Governor September 22, 1987 Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 1373.14 is added to the Health and Safety Code, to read:

1373.14. Except for a preexisting condition, any health care service plan, except a specialized health care service plan, which provides coverage on a group or individual basis for long-term care facility services or home-based care shall not exclude persons covered by the plan from receiving these benefits, if they are diagnosed as having any significant destruction of brain tissue with resultant loss of brain function, including, but not limited to, Alzheimer's disease and other related dementing illnesses, or so-called "chronic brain disorder" from the coverage offered for long-term care facility services or home-based care.

SEC. 2. Section 10123.16 is added to the Insurance Code, to read:

10123.16. Except for a preexisting condition, every disability insurer issuing policies of individual or group disability insurance in this state that offers group or individual coverage for long-term care facility services or home-based care shall not exclude persons covered by the plan from receiving these benefits, if they are diagnosed as having any significant destruction of brain tissue with resultant loss of brain function, including, but not limited to, Alzheimer's disease and other related dementing illnesses, or so-called "chronic brain disorder" from the coverage offered for long-term care facility services or home-based care.

SEC. 2.5. Section 10123.17 is added to the Insurance Code, to read:

10123.17. Except for a preexisting condition, every self-insured employee welfare benefit plan in this state that offers group coverage for long-term care facility services or home-based care shall not exclude persons covered by the plan from receiving these benefits, if they are diagnosed as having any significant destruction of brain tissue with resultant loss of brain function, including, but not limited to, Alzheimer's disease and other related dementing illnesses, or so-called "chronic brain disorder" from the coverage offered for long-term care facility services or home-based care.

SEC. 3. Section 11512.177 is added to the Insurance Code, to read:

11512.177. Except for a preexisting condition, every nonprofit hospital service plan that covers hospital, medical, or surgical expenses on a group or individual basis, and which offers coverage for long-term care facility services or home-based care, shall not exclude persons covered by the plan from receiving these benefits, if they are diagnosed as having any significant destruction of brain tissue with resultant loss of brain function, including, but not limited to, Alzheimer's disease and other related dementing illnesses, or so-called "chronic brain disorder" from the coverage offered for long-term care facility services or home-based care.

CHAPTER 1039

An act to amend Sections 600, 4009, and 27031 of, to add Sections 14500, 14510, 14600, 14700, 14800, 14810, 14811, 14820, 14821, 14830, 14831, 14900, 14950, 14960, 14970, and 14971 to, and to repeal Sections 71, 710, 1502, 3512, 3576, 5202, 15208, 17022.5, 17132, 17133, 17135, 17181, 23516, and 27300 of, the Elections Code, relating to elections.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 71 of the Elections Code is repealed.

SEC. 2. Section 600 of the Elections Code is amended to read:

600. (a) At least once, and more often if he or she deems it necessary, within each two-year period commencing on the first day of January in each odd-numbered year, the county clerk shall have printed a complete index, by precinct, to the affidavits of registration current at the date of printing.

(b) (1) The index shall contain the name, address, residence telephone number if furnished, and political affiliation of each voter, and also a ruled space to the left of each name, within which to write, in figures, the line number designating the position of the name of the voter on the roster of voters.

(2) The name shall include the given name and the middle name or initials, if any. At the affiant's option, the given name may be preceded by the designation "Miss," "Ms.," "Mrs." or "Mr."

(c) The index shall be printed in a size no smaller than eight-point roman type on eight-point body and shall be arranged in alphabetical order in accordance with the surnames of the voters.

(d) A space of not less than one-quarter inch or one line of printing shall be left between the names of voters beginning with one letter of the alphabet and those starting with the next letter of the alphabet.

(e) Supplements of the same content and style may be printed as need for them appears.

SEC. 3. Section 710 of the Elections Code is repealed.

SEC. 4. Section 1502 of the Elections Code is repealed.

SEC. 5. Section 3512 of the Elections Code is repealed.

SEC. 6. Section 3576 of the Elections Code is repealed.

SEC. 7. Section 4009 of the Elections Code is amended to read:

4009. After the petition has been filed, as herein provided, the elections official shall examine the petition in the same manner as are county petitions in accordance with Sections 3707 and 3708 except that, for the purposes of this section, references to the board of supervisors shall be treated as references to the legislative body of the city.

SEC. 8. Section 5202 of the Elections Code is repealed.

SEC. 9. Section 14500 is added to the Elections Code, to read:

14500. (a) The elections official shall preserve all canceled original affidavits of registration for a period of five years, after which they may be destroyed by that officer.

(b) In lieu of preserving the canceled original affidavit of registration, the elections official may, by filming or other suitable method, record the canceled affidavit and destroy the affidavit following the first general election after the date of cancellation.

SEC. 10. Section 14510 is added to the Elections Code, to read:

14510. The elections official shall keep a copy of the index to the affidavits of registration described in Section 600 on file as a public

record for election, political research, and governmental purposes for a period of five years.

SEC. 11. Section 14600 is added to the Elections Code, to read:

14600. (a) All nomination documents and signatures in lieu of filing fee petitions filed in accordance with this code shall be held by the officer with whom they are filed during the term of office for which they are filed and for four years after the expiration of the term.

(b) Thereafter, the documents and petitions shall be destroyed as soon as practicable unless they either are in evidence in some action or proceeding then pending or unless the elections official has received a written request from the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a grand jury, or the governing body of a county, city and county, or district, including a school district, that the documents and petitions be preserved for use in a pending or ongoing investigation into election irregularities, the subject of which relates to the placement of a candidate's name on the ballot, or in a pending or ongoing investigation into a violation of the Political Reform Act of 1974 as set forth in Title 9 (commencing with Section 81000) of the Government Code.

SEC. 12. Section 14700 is added to the Elections Code, to read:

14700. (a) Elections officials required by law to receive or file in their offices any initiative or referendum petition shall preserve the petition until eight months after the certification of the results of the election for which the petition qualified or, if the measure, for any reason, is not submitted to the voters, eight months after the final examination of the petition by the elections official.

(b) Thereafter, the petition shall be destroyed as soon as practicable unless it is in evidence in some action or proceeding then pending or unless the elections official has received a written request from the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a grand jury, or the governing body of a county, city and county, or district, including a school district, that the petition be preserved for use in a pending or ongoing investigation into election irregularities, the subject of which relates to the petition's qualification or disqualification for placement on the ballot, or in a pending or ongoing investigation into a violation of the Political Reform Act of 1974 as set forth in Title 9 (commencing with Section 81000) of the Government Code.

(c) Public access to any such petition shall be restricted in accordance with the provisions of Section 6253.5 of the Government Code.

(d) This section shall apply to the following petitions:

(1) Statewide initiative and referendum petitions.

(2) County initiative and referendum petitions.

(3) Municipal initiative and referendum petitions.

(4) Municipal city charter amendment petitions.

(5) District initiative and referendum petitions.

SEC. 13. Section 14800 is added to the Elections Code, to read:

14800. (a) The elections official shall preserve all rosters of voters or combined rosters and indexes as provided for in Section 14006, if applicable, until five years after the date of the election, after which they may be destroyed by that official.

(b) In lieu of preserving the original roster of voters, the elections official may, by filming or other suitable method, record the original roster of voters and destroy the roster following the next subsequent general election.

SEC. 14. Section 14810 is added to the Elections Code, to read:

14810. (a) The following provisions shall apply to those elections where candidates for one or more of the following offices are voted upon: President, Vice President, United States Senator, and United States Representative.

(b) The packages containing the following ballots and identification envelope shall be kept by the elections official, unopened and unaltered, for 22 months subsequent to the date of the declaration of the result of the election:

(1) Voted polling place ballots.

(2) Voted absent voter ballots.

(3) Absent voter identification envelopes.

(4) Spoiled ballots.

(5) Canceled ballots.

(6) Unused absent voters ballots surrendered by the voter pursuant to Section 1012.

(7) Unused polling place ballots.

(c) If a contest is not commenced within the 22-month period, or if a criminal prosecution involving fraudulent use, marking or falsification of ballots or forgery of absent voters' signatures is not commenced within the 22-month period, either of which may involve the vote of the precinct from which voted ballots were received, the elections official may have the ballots destroyed or recycled.

SEC. 15. Section 14811 is added to the Elections Code, to read:

14811. (a) The following provisions shall apply to all state or local elections not provided for in subdivision (a) of Section 14810. An election is not deemed a state or local election if votes for candidates for federal office may be cast on the same ballot as votes for candidates for state or local office.

(b) The packages containing the following ballots and identification envelopes shall be kept by the elections official, unopened and unaltered, for six months subsequent to the date of the declaration of the result of the election:

(1) Voted polling place ballots.

(2) Voted absent voter ballots.

(3) Absent voter identification envelopes.

(4) Spoiled ballots.

(5) Cancelled ballots.

(6) Unused absent voter ballots surrendered by the voter

pursuant to Section 1012.

(7) Unused polling place ballots.

(c) If a contest is not commenced within the six-month period, or if a criminal prosecution involving fraudulent use, marking or falsification of ballots or forgery of absent voters' signatures is not commenced within the six-month period, either of which may involve the vote of the precinct from which voted ballots were received, the elections official may have the ballots destroyed or recycled.

SEC. 16. Section 14820 is added to the Elections Code, to read:

14820. (a) The following provisions shall apply to those elections where candidates for one or more of the following offices are voted upon: President, Vice President, United States Senator, and United States Representative.

(b) The elections official shall preserve the package or packages containing the following items for a period of 22 months:

(1) Two tally sheets.

(2) The copy of the index used as the voting record.

(3) The challenge lists.

(4) The assisted voters list.

(5) The affidavits of the persons assisting voters.

(c) All voters may inspect the contents of the package or packages at all times following commencement of the official canvass of the votes.

(d) If a contest is not commenced within the 22-month period, or if a criminal prosecution involving fraudulent use, marking, or falsification of ballots or forgery of absent voters' signatures is not commenced within the 22-month period, either of which may involve the vote of the precinct from which voted ballots were received, the elections official may have the ballots destroyed or recycled.

SEC. 17. Section 14821 is added to the Elections Code, to read:

14821. (a) The following provisions shall apply to all state or local elections not provided for in subdivision (a) of Section 14820. An election is not deemed a state or local election if votes for candidates for federal office may be cast on the same ballot as votes for candidates for state or local office.

(b) The elections official shall preserve the package or packages containing the following items for a period of six months:

(1) Two tally sheets.

(2) The copy of the index used as the voting record.

(3) The challenge lists.

(4) The assisted voters list.

(5) The affidavits of the persons assisting voters.

(b) All voters may inspect the contents of the package or packages at all times following commencement of the official canvass of the votes.

(c) If a contest is not commenced within the six-month period, or if a criminal prosecution involving fraudulent use, marking or

falsification of ballots, or forgery of absent voters' signatures is not commenced within the six-month period, either of which may involve the vote of the precinct from which voted ballots were received, the election official may have the ballots destroyed or recycled.

SEC. 18. Section 14830 is added to the Elections Code, to read:

14830. (a) The following provisions shall apply to those elections where candidates for one or more of the following offices are voted upon: President, Vice President, United States Senator, and United States Representative.

(b) Upon the completion of the counting of the votes as provided in Article 4 (commencing with Section 17180) of Chapter 13 of Division 12, all ballot cards shall be arranged by precincts and shall be kept by the elections official for 22 months or so long thereafter as any contest involving the vote at the election remains undetermined.

(c) Notwithstanding any other provision of this code, the final disposition of all voted ballot cards shall be determined by the elections official.

(d) Sealed ballot containers may be opened if the elections official determines it is necessary in a shredding or recycling process.

SEC. 19. Section 14831 is added to the Elections Code, to read:

14831. (a) The following provisions shall apply to all state or local elections not provided for in subdivision (a) of Section 14830. An election is not deemed a state or local election if votes for candidates for federal office may be cast on the same ballot as votes for candidates for state or local office.

(b) Upon the completion of the counting of the votes as provided in Article 4 (commencing with Section 17180) of Chapter 13 of Division 12, all ballot cards shall be arranged by precincts and shall be kept by the elections official for six months or so long thereafter as any contest involving the vote at the election remains undetermined.

(c) Notwithstanding any other provision of this code, the final disposition of all voted ballot cards shall be determined by the elections official.

(d) Sealed ballot containers may be opened if the elections official determines it is necessary in a shredding or recycling process.

SEC. 20. Section 14900 is added to the Elections Code, to read:

14900. (a) The clerk or, in the case of the recall of a state officer, the Secretary of State, shall preserve in his or her office all recall petitions filed for eight months after the results of the election for which the petition qualified or, if no election is held, eight months after the clerk's final examination of the petition.

(b) Thereafter, the petition shall be destroyed as soon as practicable, unless it is in evidence in some action or proceeding then pending or unless the elections official has received a written request from the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a grand jury, or the

govening body of a county, city and county, city, or district, including a school district, that the petition be preserved for use in a pending or ongoing investigation into election irregularities, or in a pending or ongoing investigation into a violation of the Political Reform Act of 1974 as set forth in Title 9 (commencing with Section 81000) of the Government Code.

(c) Public access to any such petition shall be restricted in accordance with Section 6253.5 of the Government Code.

SEC. 21. Section 14950 is added to the Elections Code, to read:

14950. (a) A copy of each election computer vote count program for a statewide election or state special election to fill vacancies shall be deposited with the Secretary of State.

(b) The copy of the election computer vote count program specified in subdivision (a) shall be received by the Secretary of State no later than 5 p.m. on the seventh day before the election.

(c) If the election computer vote count program is modified or altered after the submission specified in subdivision (a), the elections official shall immediately deposit the subsequent program no later than noon on the day of the election.

(d) The Secretary of State shall hold the deposited programs for a period of not less than six months, at which time the program shall be returned to the elections official.

(1) The elections official shall preserve the returned program for a period of 16 months.

(2) The programs deposited in accordance with this section shall be used only for an official recount, court action, or for logic and accuracy tests required by the Secretary of State.

(e) The Secretary of State may seek injunctive relief requiring county elections officials to submit the computer vote count program specified in subdivision (a). Venue for a proceeding under this section shall be exclusively in Sacramento County.

SEC. 22. Section 14960 is added to the Elections Code, to read:

14960. Following each general election, the county clerk shall file copies of all precinct maps with the Secretary of State. If there is no change in the precinct maps from those maps which are currently on file, in lieu of filing copies of such maps with the Secretary of State the clerk may submit a written statement informing the Secretary of State of that fact. The Secretary of State shall maintain a file of all such copies for 12 years, and shall, upon request, make them available for examination.

SEC. 23. Section 14970 is added to the Elections Code, to read:

14970. (a) The following provisions shall apply to those elections where candidates for one or more of the following offices are voted upon: President, Vice President, United States Senator, and United States Representative.

(b) The elections official shall preserve the following records reflecting the appointment of precinct officials until 22 months from the date of any election.

(1) Precinct officers' declaration of intention required by Section

1637.

(2) Precinct board member applications specified in Section 1637.5.

(3) Order appointing members of the several precinct boards and designating the polling places specified in Section 1638.

(4) Nominations for appointment to the precinct board by the county central committee of each qualified political party specified in Section 1639.

(5) Written orders appointing precinct board members or designating the polling place for the precinct pursuant to Section 1648.

SEC. 24. Section 14971 is added to the Elections Code, to read:

14971. (a) The following provisions shall apply to all state or local elections not provided for in subdivision (a) of Section 14970. An election is not deemed a state or local election if votes for candidates for federal office may be cast on the same ballot as votes for candidates for state or local office.

(b) The elections official shall preserve the following records reflecting the appointment of precinct officials until six months from the date of an election.

(1) Precinct officers' declaration of intention required by Section 1637.

(2) Precinct board member applications specified in Section 1637.5.

(3) Order appointing members of the several precinct boards and designating the polling places specified in Section 1638.

(4) Nominations for appointment to the precinct board by the county central committee of each qualified political party specified in Section 1639.

(5) Written orders appointing precinct board members or designating the polling place for the precinct pursuant to Section 1648.

SEC. 25. Section 15208 of the Elections Code is repealed.

SEC. 26. Section 17022.5 of the Elections Code is repealed.

SEC. 27. Section 17132 of the Elections Code is repealed.

SEC. 28. Section 17133 of the Elections Code is repealed.

SEC. 29. Section 17135 of the Elections Code is repealed.

SEC. 30. Section 17181 of the Elections Code is repealed.

SEC. 31. Section 23516 of the Elections Code is repealed.

SEC. 32. Section 27031 of the Elections Code is amended to read:

27031. Before any signature may be affixed to a recall petition, each page of each section must bear all of the following in no less than 6-point type:

(a) A request that an election be called to elect a successor to the officer. However, if the officer is a justice of the Supreme Court or of a court of appeal as specified in subdivision (a) of Section 16 of Article VI of the California Constitution the request shall be that the Governor appoint a successor to the officer. In the case of a city recall, a request that an election be called to determine whether the

officer shall be removed from office and whether the vacancy, if any, shall be filled by appointment or special election.

(b) A copy of the notice of intention, including the statement of grounds for recall.

(c) The answer of the officer sought to be recalled, if any. If the officer sought to be recalled has not answered, the petition shall so state.

All petition sections shall be printed in uniform size and darkness with uniform spacing.

SEC. 33. Section 27300 of the Elections Code is repealed.

SEC. 34. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution to the extent that this act implements a federal law or regulation and involves only "costs mandated by the federal government," as defined by Section 17513 of the Government Code.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1040

An act to add Section 7436.1 to the Business and Professions Code, relating to cosmetology.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 7436.1 is added to the Business and Professions Code, to read:

7436.1. The board shall, with the cooperation of the department, modify its license renewal applications to allow licensees to designate whether or not they are currently employed in the branch of cosmetology for which they are licensed.

CHAPTER 1041

An act to amend Sections 11837, 11837.1, 11837.2, 11837.4, and 11837.5 of the Health and Safety Code, and to amend Sections 13352, 23171, 23176, 23191, 23241, 23242, and 23244 of the Vehicle Code, relating to alcohol and drug abuse programs.

[Approved by Governor September 22, 1987 Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 11837 of the Health and Safety Code 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 licensed pursuant to this chapter.

(b) In determining whether to refer a person, who is ordered to participate in a program pursuant to Section 23166, 23171, 23176, 23186, or 23191 of the Vehicle Code, to a licensed one-year or 30-month 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. That information shall not be furnished, however, by any person who also provides services in a privately operated, licensed program or who has any direct interest in a privately operated, licensed 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 a licensed one-year or 30-month program pursuant to this chapter.

(c) The court may, subject to Sections 11837.3 and 11838.2 and as a condition of probation, refer a person to a licensed program, even though the person's privilege to operate a motor vehicle is restricted, suspended, or revoked. A one-year program described in Section 23166 or 23186 of the Vehicle Code or a 30-month program described in Section 23171, 23176, or 23191 of the Vehicle Code may include treatment of family members and significant other persons related to the convicted person with the consent of those family members and others as described in subdivision (e) of Section 9838 of Title 9

of the California Administrative Code, if there is no increase in the costs of the program to the convicted person.

(d) As used in this chapter, "program" means a program which has been recommended by the county board of supervisors to the department and possesses a valid license issued by the department.

SEC. 2. Section 11837.1 of the Health and Safety Code is amended to read:

11837.1. (a) In utilizing any program defined in subdivision (d) of Section 11837, 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 policies.

(b) (1) If, at any time after entry into or while participating in a program, a participant who is referred to a one-year program described in Section 23166 or 23186 of the Vehicle Code fails to comply with the rules and policies 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.

(2) Notwithstanding paragraph (1), the Department of Motor Vehicles shall not suspend the driving privilege pursuant to paragraph (1) if the court, upon the petition of the person, determines that the person should be reinstated in the one-year 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 who is referred to a one-year program pursuant to Section 23166 or 23186 of the Vehicle Code or to a 30-month program pursuant to Section 23171, 23176, or 23191 of the Vehicle Code, refuses, for any reason, to consent to a chemical test that he or she is required to submit to pursuant to Section 23157 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) If the department withdraws the license of a program, the department shall immediately notify the Department of Motor Vehicles of those persons who do not commence participation in a licensed program within 21 days from the date of the withdrawal of the license 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 those persons referred to a one-year program pursuant to Section 23166 or 23186 of the Vehicle Code or to a 30-month program pursuant to Section 23171, 23176, or 23191 of the Vehicle Code.

SEC. 3. Section 11837.2 of the Health and Safety Code is amended to read:

11837.2. (a) The court may, subject to Section 11838.2, refer persons only to licensed programs. Subject to these provisions, a person is eligible to participate in the program if it is operating in (1) the county where the person is convicted, or (2) the county where the 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 a person granted probation under Section 23166 or 23186 of the Vehicle Code cannot be referred to a licensed one-year program pursuant to this section, Section 13352.5 of the Vehicle Code does not apply.

(b) Subject to Section 11838.2, if a person has consented to participate in a licensed program and the county where the person is convicted is the same county in which the person resides, the court may order the person to participate in a licensed program within that county, or, if that county does not have a licensed program, the court may order that person to participate in a licensed program within another county, pursuant to Section 11838.

(c) Subject to Section 11838.2, if a person has consented to

participate in a licensed program in the county in which that person resides or in a county in which the person's county of residence has an agreement pursuant to Section 11837, and the county where the person is convicted is not the county where the person resides, and if the court grants the person summary probation, the court may order the person to participate in a licensed program in that 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 the person resides does not have a licensed program or an agreement with another county pursuant to Section 11838 and the person consents, the court may order the person to participate in a licensed program within the county where that person is convicted or in a county with which the 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, the person may request transfer to another licensed program (1) in the same county in which the person has commenced participation in the program, upon approval of that county's alcohol program administrator, or (2) in a county other than the county in which the person has commenced participation in the program, upon approval of the alcohol program administrator of the county in which the person is participating and the county to which the person is requesting transfer.

(e) Subdivision (d) does not apply (1) if the court has ordered the person to participate in a specific licensed program, unless the 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 postconviction 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 the alcohol program administrators, shall establish procedures to ensure the effective implementation of this section.

SEC. 4. Section 11837.4 of the Health and Safety Code is amended to read:

11837.4. (a) The department shall have sole authority to license programs pursuant to this chapter. No program, regardless of how it is funded, may be licensed unless, subject to subdivision (c), it meets or exceeds the minimum standards established by the department, which shall include, but are not limited to, all of the following:

(1) For the one-year programs specified in subdivision (a) of Section 11837, 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. For the 30-month programs specified in subdivision (c)

of Section 23171, subdivision (c) of Section 23176, and subdivision (c) of Section 23191 of the Vehicle Code, each program shall provide for close and regular supervision of the person, including regular, scheduled face-to-face interviews over the course of 30 months regarding the person's progress in the program and recovery from problem drinking, alcoholism, chemical dependency, or polydrug abuse, as prescribed by regulations of the department. The interviews in either program 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 be self-supporting from the participants' fees and that each program provide for the payment of the costs of the program by participants at times and in amounts commensurate with their ability to pay in order to enable these persons to participate. Each program shall make provisions for persons who cannot afford to pay the fees. Only the department may establish the criteria and procedures for determining a participant's ability to pay. The department shall ensure that the fees are set at amounts which will enable programs to provide adequately for the immediate and long-term continuation of 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, taking into account prudent accounting, management, and business practices and procedures, the terms "profits" and "surplus." The department shall fairly construe these provisions so as not to jeopardize fiscal integrity of the programs. The department may not license 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) Both of the licensed programs described in paragraph (1) shall include a variety of treatment services for problem drinkers, alcoholics, chemical dependents, and polydrug abusers or shall have the capability of referring the persons to, and regularly and closely supervising the persons while in, any appropriate medical, hospital, or licensed residential treatment services or self-help groups for their problem drinking, alcoholism, chemical dependency, or polydrug abuse problem. In addition to the requirements of paragraph (1), the department shall prescribe in its minimum standards what other services the program shall provide, at a minimum, in the treatment of participants, which services may include lectures, classes, group discussions, group counseling, or individual counseling in addition to the interviews required by paragraph (1), or any combination

thereof. However, any class, group discussion, or counseling activity, other than lectures, shall be regularly scheduled to consist of not to exceed 15 persons, except that they may, on an emergency basis, exceed 15, but not more than 17, persons, at any one meeting. For the 30-month programs specified in subdivision (c) of Section 23171, subdivision (c) of Section 23176, and subdivision (c) of Section 23191 of the Vehicle Code, each licensed program shall include a method by which each participant shall maintain a compendium of probative evidence, as prescribed in the regulations of the department, on a trimonthly basis demonstrating a performance of voluntary community service by the participant, including, but not limited to, the prevention of drinking and driving, the promotion of safe driving, and responsible attitudes toward the use of chemicals of any kind, for not less than 10 hours per month, with a total of not less than 300 hours of service for the entire program. In determining whether or not the participant has met the objectives of the program, the court shall consider the participant's demonstration of significant improvement in any of the following areas of personal achievement:

(A) Significant improvement in occupational performance, including efforts to obtain gainful employment.

(B) Significant improvement in physical and mental health.

(C) Significant improvement in family relations, including financial obligations.

(D) Significant improvement in financial affairs and economic stability.

The compendium of evidence shall be maintained by the participant for review by the program, court, probation officer, or other appropriate governmental agency. The program officials, with the express approval of the referring court, shall make provisions for a participant to voluntarily enter, using the participant's own resources, a licensed chemical dependency recovery hospital or residential treatment program which has a valid license and is certified by the department to provide alcohol or drug services, and to receive three weeks of program participation credit for each week of that treatment, not to exceed 12 weeks of program participation credit, but only if the treatment is at least two weeks in duration. The program shall document probative evidence of this hospital or residential care treatment in the participant's program file.

(4) In order to assure program effectiveness, the department shall require, whenever appropriate, that the licensed 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 chemical dependency and to assist them in their recovery.

(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 licensed, however, unless the county complies with the requirements of subdivision (b) of Section 11812. The provider of a program that offers either or both programs described in this section shall be required to obtain only one license.

(c) The approval for the establishment of the 30-month program is contingent upon approval by the county alcohol program administrator, based upon confirmation that the program applicant is capable of providing the service and that the fiscal integrity of the program applicant will not be jeopardized by the operation of the program.

The court shall refer a person to a 30-month treatment program only if a 30-month program exists or is provided for in the jurisdiction of the court.

(d) A county or program shall not prescribe additional program requirements unless the requirements are specifically approved by the department.

(e) The department may license a program on a provisional basis.

SEC. 5. Section 11837.5 of the Health and Safety Code is amended to read:

11837.5. (a) No person may participate in any program that has not been licensed by the department pursuant to the regulations adopted pursuant to this part.

(b) Subject to subdivision (b) of Section 11837.4, the department shall charge a reasonable fee for licensing or for the renewal of a license of a program. The fee shall be set at a level sufficient to cover all administrative costs incurred by the department.

(c) There is established in the State Treasury a Drinking Driver Program Licensing Trust Fund. All licensure fees collected from the providers of drinking driver service shall be deposited in this fund. The money in the fund shall be available when appropriated by the Legislature.

Except as otherwise provided in this section, if funds remain in this fund after allocation by the Legislature for the department's costs, a percentage of the excess funds shall be annually rebated by the Legislature to the licensees based on the percentage their licensing fee is of the total amount of fees collected by the department. A reserve equal to 10 percent of the total licensure fees collected during the preceding fiscal year may be held in the trust fund for allocation by the Legislature to reimburse the department if actual costs for licensure administration exceed fees collected during a fiscal year.

SEC. 6. Section 13352 of the Vehicle Code is amended to read:

13352. (a) The department shall immediately suspend or revoke 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 a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, or upon receipt of a report of a

judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153 or subdivision (a) of Section 23109. For purposes of this section, suspension or revocation shall be as follows:

(1) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23160, the privilege shall be suspended for a period of six months if the court orders the department to suspend the privilege, or if the court does not grant probation, or if the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1. However, where (A) the driving privilege is required to be suspended by this paragraph due to the violation having occurred in vehicles requiring a class 1 or class 2 driver's license, and (B) the court grants probation and imposes the condition specified in subdivision (b) of Section 23161, the department shall issue the person a class 3 driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (e) of Section 13352.5. The department shall issue the restricted license upon receipt of an abstract of record from the court pursuant to Section 1803 certifying that the court has granted probation to the person on conditions which include the condition specified in subdivision (b) of Section 23161.

(2) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23180, the privilege shall be suspended for a period of one year. The privilege shall not be reinstated until the person gives proof of ability to respond in damages as defined in Section 16430.

(3) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23152 punishable under Section 23165, the privilege shall be suspended for 18 months. The privilege shall not be reinstated until the person gives proof of ability to respond in damages as defined in Section 16430.

(4) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23153 punishable under Section 23185, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages as defined in Section 16430.

(5) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23170, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until the person files proof of ability to respond in damages as defined in Section 16430 and gives proof satisfactory to the department of successful completion of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of

a one-year program or a 30-month program is required in order to become eligible for a California driver's license. Any individual convicted of a violation of Section 23152 punishable under Section 23170 may also, at any time after sentencing, petition the court for referral to a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(6) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23190, the privilege shall be revoked for a period of five years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages as defined in Section 16430 and gives proof satisfactory to the department of successful completion of a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a 30-month program is required in order to become eligible for a California driver's license. Any individual convicted of a violation of Section 23153 punishable under Section 23190 may also, at any time after sentencing, petition the court for referral to a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(7) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23175, the privilege shall be revoked for a period of four years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages as defined in Section 16430 and gives proof satisfactory to the department of successful completion of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. Any individual convicted of a violation of Section 23152 punishable under Section 23175 may also, at any time after sentencing, petition the court for referral to a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(8) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (e) of that section, the privilege shall be suspended for a period of 90 days to six months, if and as ordered by the court.

(9) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (f) of that section, the privilege shall be suspended for a period of six months, if the court orders the department to suspend the privilege. The privilege shall not be reinstated until the person gives proof of ability to respond in damages as defined in Section 16430.

(b) For the purpose of paragraphs (2) to (9), inclusive, of subdivision (a), the finding of the juvenile court judge, the juvenile traffic hearing officer, or the referee of a juvenile court of a commission of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, as specified in subdivision (a) of this section, is a conviction.

(c) Each judge of a juvenile court, juvenile traffic hearing officer, or referee of a juvenile court shall immediately report the findings specified in subdivision (a) to the department.

(d) A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada which, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for purposes of this section, and such a conviction of an offense which, if committed in this state, would be a violation of Section 23153, is a conviction of Section 23153 for purposes of this section. The department shall suspend or revoke the privilege to operate a motor vehicle pursuant to this section upon receiving notice of such a conviction.

SEC. 7. Section 23171 of the Vehicle Code 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 those counties participating in the pilot program established pursuant to Article 3 (commencing with Section 23230), the court shall require that at least 30 days of the term of imprisonment prescribed in subdivision (a) be served in the county jail, but may in its discretion, if requested by the person convicted, order that a portion or all of the rest of the term be served by participation in a treatment program in an alcohol rehabilitation facility approved pursuant to Article 3 (commencing with Section 23230), as designated by the court. The person shall not be ordered to the alcohol rehabilitation facility for less than 30 days, and the person shall pay the costs of that treatment program commensurate with the person's ability to pay. A violation of the terms of the program or leaving the alcohol rehabilitation facility without

authorization is a violation of probation.

(c) In addition to subdivision (a), if the court grants probation to any person punished under Section 23170, the court, may, in its discretion, order as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. In lieu of the minimum term of imprisonment in subdivision (a), the court shall impose as a condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. The court shall not order the treatment prescribed by this subdivision unless the person makes a specific request and shows good cause for the order, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

(d) 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, and unless the person is ordered to participate in and complete a program under subdivision (c), 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. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (a) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license

revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

SEC. 8. Section 23176 of the Vehicle Code is amended to read:

23176. (a) If the court grants probation to any person punished under Section 23175, 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 180 days but not more than one year and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352.

(b) In those counties participating in the pilot program established pursuant to Article 3 (commencing with Section 23230), the court shall require that at least one-fourth of the term of imprisonment prescribed in subdivision (a) be served in the county jail, but may in its discretion, if requested by the person convicted, order that a portion or all of the rest of the term be served by participation in a treatment program in an alcohol rehabilitation facility approved pursuant to Article 3 (commencing with Section 23230), as designated by the court. The person shall not be ordered to the alcohol rehabilitation facility for less than 30 days, and the person shall pay the costs of that treatment program commensurate with the person's ability to pay. A violation of the terms of the program or leaving the alcohol rehabilitation facility without authorization is a violation of probation.

(c) In addition to subdivision (a), if the court grants probation to any person punished under Section 23175, the court, may, in its discretion, order as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. In lieu of the minimum term of imprisonment in subdivision (a), the court shall impose as a condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. The court shall not order the treatment prescribed by this subdivision unless the person makes a specific request and shows good cause for the order, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the

conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (7) of subdivision (a) of Section 13352.

(d) In addition to the provisions of Section 23206 and subdivision (a), if the court grants probation to any person punished under Section 23175 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, and unless the person is ordered to participate in, and complete, a program under subdivision (c), 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. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (7) of subdivision (a) of Section 13352.

SEC. 9. Section 23191 of the Vehicle Code 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 those counties participating in the pilot program established pursuant to Article 3 (commencing with Section 23230), the court shall require that at least one-fourth of the terms of imprisonment prescribed in subdivision (a) be served in the county jail, but may in its discretion order that a portion or all of the rest of the term be served by participation in a treatment program in an alcohol rehabilitation facility approved pursuant to Article 3 (commencing with Section 23230), as designated by the court. The person shall not be ordered to the alcohol rehabilitation facility for less than 30 days, and the person shall pay the costs of that treatment program commensurate with the person's ability to pay. A violation of the terms of the program or leaving the alcohol rehabilitation facility without authorization is a violation of probation.

(c) In addition to the provisions of Section 23206 and subdivision (a), if the court grants probation to any person punished under Section 23190, the court shall impose as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a 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. In lieu of the minimum term of imprisonment in subdivision (a), the court shall impose as a minimum condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. Except as provided in subdivision (b), if the court grants probation under this section, the court shall order the treatment prescribed by this subdivision, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (6) of subdivision (a) of Section 13352.

SEC. 10. Section 23241 of the Vehicle Code, as amended by Chapter 247 of the Statutes of 1987, is amended to read:

23241. A county may develop, implement, operate, and administer an alcohol and drug problem assessment program pursuant to this article by resolution of the board of supervisors. Any judicial district within the county may elect not to participate in the county alcohol and drug problem assessment program. The alcohol and drug problem assessment program may include a referral and client tracking component.

SEC. 11. Section 23242 of the Vehicle Code, as amended by Chapter 247 of the Statutes of 1987, is amended to read:

23242. Any person convicted of a violation of Section 23152 or 23153 in a judicial district that participates in a county alcohol and drug problem assessment program pursuant to this article shall participate in the program.

SEC. 12. Section 23244 of the Vehicle Code, as amended by Chapter 247 of the Statutes of 1987, is amended to read:

23244. (a) Notwithstanding any other provision of law, in addition to any other fine or penalty assessment, there shall be levied an assessment of not more than fifty dollars ($50) upon every fine, penalty, or forfeiture imposed and collected by the courts for a violation of Section 23152 or 23153 in any judicial district that participates in a county alcohol and drug problem assessment program pursuant to this article.

(b) The court may determine if the defendant has the ability to pay the assessment. If the court determines that the defendant has the ability to pay the assessment then the court may set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court determines is reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(c) Notwithstanding Section 1463 or 1464 of the Penal Code or any other provision of law, all moneys collected pursuant to this section shall be deposited in a special account in the county treasury and shall be used exclusively to pay for the costs of developing, implementing, operating, maintaining, and evaluating alcohol and drug problem assessment programs.

(d) On January 15 of each year, the treasurer of each county that administers an alcohol and drug problem assessment program 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.

(e) Any moneys remaining in the special account, if and when the alcohol and drug problem assessment program is terminated, shall be transferred into the general fund of the county.

(f) The county treasurer shall annually transfer an amount of money equal to the county's administrative cost incurred pursuant to this section, as he or she shall determine, from the special account to the general fund of the county.

SEC. 13. The State Department of Alcohol and Drug Programs shall evaluate the effectiveness of the 30-month treatment programs provided in this act and report thereon to the Legislature on or before January 1, 1993. The evaluation shall include data comparing the program participants to other persons convicted of similar driving under the influence offenses who did not participate in the program. The comparison shall include data on subsequent arrests and convictions for driving under the influence and other alcohol-related offenses. Any department costs associated with the evaluation shall be deemed administrative costs for the purpose of funding pursuant to Section 11837.5 of the Health and Safety Code.

CHAPTER 1042

An act to amend Section 11010.2 of the Business and Professions Code, relating to real estate.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 11010.2 of the Business and Professions Code is amended to read:

11010.2. Upon receipt of a notice of intention pursuant to Section 11010 and an application for issuance of a public report, the commissioner shall review the notice and application to determine if the notice and application are substantially complete, with respect to quantitative requirements. As used in this section, "quantitative" means the number and type of documents required to make the filing substantially complete, as defined in the regulations of the commissioner, without regard to the content of those requirements.

(a) Upon determination by the commissioner that the notice and application are substantially complete, the commissioner shall do all of the following:

(1) Notify the applicant in writing of that determination within 10 days of receipt of the notice and application. The notification shall include any request for additional information concerning the project as the commissioner deems necessary.

(2) Provide the applicant with a listing of all deficiencies and substantive inadequacies which exist in the notice and application within 60 days of that determination, in the case of subdivisions specified in Section 11000.1, 11000.5, or 11004.5, and within 20 days of that determination, in the case of other subdivisions.

(3) Review and advise the applicant within 30 days of receipt of documents, materials, writings, or other information intended to correct the listing of deficiencies and substantive inadequacies which remain to be corrected, in the case of subdivisions specified in Section 11000.1, 11000.5, or 11004.5, and within 20 days of receipt, in the case of other subdivisions, or notify the applicant that the application is qualitatively complete. As used in this section, "qualitatively" means the information or documentation contained in documents required to make the filing substantially complete, as defined in the regulations of the commissioner, which the commissioner deems necessary for the issuance of a public report.

This subdivision is applicable to any and all submissions by the applicant which are intended to correct a listing of deficiencies or substantive inadequacies provided to the applicant in accordance with this subdivision.

(4) Issue a public report within 15 days, in the case of a subdivision specified in Section 11000.1, 11000.5, or 11004.5, or 10 days, in the case

of other subdivisions, after correction of all the deficiencies and substantive inadequacies of which the applicant was informed pursuant to subdivision (b) and after the applicant has provided additional information such as may be requested under subdivision (a).

(b) In the event that the commissioner determines pursuant to this section that a notice of intention and an application are not substantially complete, the commissioner shall inform the applicant, in writing within 10 days of the receipt of such notice and application, in what respects the notice and application are not complete.

(c) The commissioner shall adopt regulations, in accordance with Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, which define "substantially complete" and which list all the requirements necessary for a notice of intention and application to be considered "substantially complete."

(d) The commissioner may adopt emergency regulations, in accordance with Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, to do all of the following:

(i) As set forth below, increase those time periods specified in subdivision (a), upon a showing that the number of notices of intention and applications for a subdivision public report filed with the department for any immediately preceding six-month period has increased by more than 15 percent over the monthly average number of notices and applications filed for the base period commencing July 1, 1983, and ending June 30, 1986:

(A) The time for issuing the notice provided in paragraph (1) of subdivision (a) shall increase to 15 days.

(B) The time for providing the listing required by paragraph (2) of subdivision (a) shall increase to 90 days in the case of subdivisions specified in Sections 11000.1, 11000.5, and 11004.5 and to 30 days for other subdivisions.

(C) The time period provided in paragraph (3) of subdivision (a) for responding to receipt of documents intended to correct deficiencies shall be 30 days without regard to the type of subdivision being processed.

(D) The time periods provided in paragraph (4) of subdivision (a) within which the commissioner is required to issue a public report in the case of subdivisions specified in Sections 11000.1, 11000.5 and 11004.5, shall increase to 30 days and in the case of other subdivisions shall increase to 15 days.

This section shall not apply to filings made exclusively under Section 11010.1. Nothing in this section shall require the commissioner to issue a public report where grounds for denial exist, provided that issuance of a public report shall not be denied for inadequate information if the cause thereof is the commissioner's failure to comply with this section.

Notwithstanding this section, the commissioner shall not be required to issue a public report if grounds for denial exist under

Section 11018 or 11018.5. However, the commissioner may not base the denial of a public report on the lack of adequate information if the commissioner has not acted within the time periods prescribed herein.

CHAPTER 1043

An act to amend Section 2984.2 of the Civil Code, relating to the Automobile Sales Finance Act.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 2984.2 of the Civil Code is amended to read:

2984.2. (a) No conditional sale contract, and no agreement between a seller and a buyer made in connection with a conditional sale contract, may provide for the inclusion of title to or a lien upon any property other than the following:

(1) The motor vehicle which is the subject matter of the sale, including any replacement of that motor vehicle, or accessories, accessions, or replacement of those accessories or accessions, or proceeds thereof.

(2) The proceeds of any insurance policies covering the motor vehicle which are required by the seller or the returned premiums of any such policies if the premiums for such policies are included in the amount financed.

(3) The proceeds of any credit insurance policies which the buyer purchases in connection with the motor vehicle conditional sale contract or the returned premiums of any such policies if the premiums for such policies are included in the amount financed.

(4) The proceeds and returned price of any service contract if the cost of such contract is included in the amount financed.

(b) Subdivision (a) shall not apply to any agreement which meets the requirements of subdivision (b) of Section 2982.5 and otherwise complies with this chapter, nor, with respect to a mobilehome sold prior to July 1, 1981, to any agreement whereby a security interest is taken in real property on which the mobilehome is installed on a foundation system pursuant to Section 18551 of the Health and Safety Code.

(c) A provision in violation of this section shall be void.

CHAPTER 1044

An act to to repeal and add Section 805 of the Business and Professions Code, relating to consumer affairs.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. It is the intent of the Legislature to further integrate private and public systems of peer review in the provision of health services.

SEC. 2. Section 805 of the Business and Professions Code is repealed.

SEC. 3. Section 805 is added to the Business and Professions Code, to read:

805. (a) As used in this section, the following terms have the following definitions:

(1) "Peer review body" includes:

(A) A medical or professional staff of any licensed health care facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code.

(B) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a nonprofit hospital service plan regulated under Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(C) Any medical, psychological, dental, or podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.

(D) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class, which functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) "Licentiate" means a physician and surgeon, podiatrist, clinical psychologist, or dentist.

(3) "Agency" means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) "Staff privileges" means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractural arrangements to provide professional services,

including, but not limited to, arrangements to provide outpatient services.

(5) "Denial or termination of privileges" includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, when the action is based on medical disciplinary cause or reason.

(6) "Medical disciplinary cause or reason" means that aspect of a licentiate's competence or professional conduct which is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) "805 report" means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body shall file an 805 report with the relevant agency whenever any of the following actions are taken as a result of a determination of a peer review body:

(1) A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

In addition to the duty to report as set forth in paragraphs (1), (2) and (3), the peer review body also has a duty to report under this section a licentiate's resignation from membership, staff, or employment following notice of an impending investigation based on information indicating medical disciplinary cause or reason.

The 805 report shall be filed within 30 days after the effective date of the denial, termination, restriction, or resignation, or after the exhaustion of administrative procedures, without regard to any filing for judicial review.

An 805 report shall also be filed within 30 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report.

The information to be reported in an 805 report shall include the name of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the

reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

In those instances where another peer review body is required to file an 805 report, a health care service plan or nonprofit hospital service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason.

(c) The reporting required herein shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976. The Board of Medical Quality Assurance, the Board of Osteopathic Examiners, and the Board of Dental Examiners shall disclose reports as required by Section 805.5.

An 805 report shall be maintained by an agency for dissemination purposes for a period of three years after receipt.

(d) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(e) Failure to make a report pursuant to this section is a misdemeanor punishable by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200).

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 1045

An act to amend Sections 14800, 14821, and 14860 of, and to add Section 15307 to, the Financial Code, and to amend Section 5101 of the Probate Code, relating to financial institutions.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 14800 of the Financial Code is amended to read:

14800. (a) Every credit union may admit to membership those persons qualified for membership: (1) upon the purchase of a membership in the credit union as provided in the credit union

bylaws; or (2) upon payment of an entrance fee established from time to time by the board of directors; or (3) upon the purchase of one or more shares in the credit union as provided in the credit union's bylaws.

(b) No officer, director, committee member, or employee of any credit union shall approve a person for admission to membership or admit an applicant for membership in the credit union or extend any benefit or service of the credit union to any person, unless that person is admitted to membership in the credit union pursuant to subdivision (a).

(c) Nothing in subdivisions (a) and (b) shall be construed to limit the powers of a credit union to engage in joint service programs or business relationships for the benefit of their members where some incidental benefit may flow to third parties to the transaction or the authority for a credit union to engage in joint loan programs pursuant to Section 14959.

SEC. 2. Section 14821 of the Financial Code is amended to read:

14821. (a) Except for solicited proxies which on their face provide for a period of validity of three years from the date of execution of the proxy, any form of proxy or written ballot distributed to 10 or more members of a credit union shall afford an opportunity on the proxy or form of written ballot to specify at the time the written ballot or proxy is distributed, a choice between approval and disapproval of each matter or group of related matters intended to be acted upon at the meeting for which the proxy is solicited or by such written ballot, and shall provide, subject to reasonable specified conditions, that where the person solicited specifies a choice with respect to any such matter the vote shall be cast in accordance therewith.

(b) In any election of directors, any form of proxy or written ballot in which the directors to be voted upon are named therein as candidates and which is marked by a member "withhold" or otherwise marked in a manner indicating that the authority to vote for the election of directors is withheld, shall not be voted either for or against the election of a director.

(c) In the case of any solicited proxy which on its face provides for a period of validity of three years from the date of execution of the proxy, the credit union shall provide to the person executing the proxy a written notice at the time of solicitation and in each succeeding year of validity thereof, which shall advise the member of the nature of each matter or group of related matters on which the proxy may be voted. Notice pursuant to this subdivision may be sent with notice to the members of the date, time, and place of the annual meeting.

(d) Failure to comply with this section shall not invalidate any corporate action taken, but may be the basis for challenging any proxy at a meeting or written ballot and the superior court may compel compliance therewith at the suit of any member.

SEC. 3. Section 14860 of the Financial Code is amended to read:

14860. Except as provided in this section and Part 1 (commencing with Section 5100) of Division 5 of the Probate Code, no credit union shall exercise trust powers except upon qualifying as a trust company pursuant to Division 1 (commencing with Section 99).

(a) Notwithstanding any other provisions of law relating to trusts and trust authority, subject to the regulations of the commissioner, a credit union may act as a trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States which is a part of a pension plan for its members or groups or organizations of its members, which qualifies or has qualified for specific tax treatment under Section 401 or Section 408 of the Internal Revenue Code, Title 26 of the United States Code, or any deferred compensation plan for the benefit of the credit union's employees, provided the funds received pursuant to these plans are invested as provided in Section 16040 of the Probate Code. All funds held by a credit union trustee or in a custodial capacity shall be maintained in accordance with applicable laws and rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other authority exercising jurisdiction over such trust or custodial accounts. The credit union shall maintain individual records for each participant or beneficiary which show in detail all transactions relating to the funds of each participant or beneficiary.

The trust instrument or agreement shall provide for the appointment of a successor trustee or custodian by a person, committee, corporation, or organization other than the credit union or any person acting in his or her capacity as a director, employee, or agent of the credit union, upon notice from the credit union or the commissioner that the credit union is unwilling or unable to continue to act as trustee or custodian.

(b) Shares may be issued in a revocable or irrevocable trust subject to the following:

(1) When shares are issued in a revocable trust, the settlor shall be a member of the credit union issuing the shares in his or her own right.

(2) When shares are issued in an irrevocable trust, the settlor or the beneficiary shall be a member of this credit union in his or her own right. For purposes of this section, shares issued pursuant to a pension plan authorized by this section shall be treated as an irrevocable trust unless otherwise indicated in rules and regulations issued by the commissioner.

(3) This subdivision does not apply to trust accounts established prior to the effective date of this subdivision.

SEC. 4. Section 15307 is added to the Financial Code, to read:

15307. Notwithstanding any provision to the contrary, the commissioner shall ratably return to the credit union converting to a federal charter pursuant to this article, any charges and assessments

collected pursuant to Section 14350. The portion of the charges and assessments collected pursuant to Section 14350 shall be ratably returned on a monthly basis for the months after the month in which the conversion to a federal charter is effective.

SEC. 5. Section 5101 of the Probate Code is amended to read:

5101. In this part, unless the context otherwise requires:

(a) "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangement.

(b) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

(c) "Financial institution" means:

(1) Any organization authorized to do business under state or federal laws relating to credit unions.

(2) Any industrial loan company as defined in Section 18003 of the Financial Code.

(d) "Joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship.

(e) A "multiple-party account" is any of the following types of account: (1) a joint account, (2) a P.O.D. account, or (3) a trust account. It does not include: (1) accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, (2) accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization, or (3) a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

(f) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits thereto made by or for the party, less all withdrawals made by or for the party that have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question. In the absence of proof otherwise, only parties who have a present right of withdrawal shall be considered as having a net contribution and the net contribution of each of the parties having a present right of withdrawal is deemed to be an equal amount.

(g) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to the payee or beneficiary by reason of surviving the original payee or trustee. Unless the context otherwise requires, "party" includes a guardian, conservator, personal representative, or assignee, including a levying creditor, of a party. "Party" also includes a person identified as a trustee of an

account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless the beneficiary has a present right of withdrawal.

(h) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account pursuant to a pledge.

(i) "P.O.D. account" means an account payable on request to one person during the person's lifetime and on the person's death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

(j) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

(k) "Proof of death" includes an original or attested or certified copy of a death certificate or record or report that is prima facie evidence of death under Section 10577 of the Health and Safety Code, Sections 1530 to 1532, inclusive, of the Evidence Code, or another statute of this state.

(*l*) A financial institution "receives" an order or notice under this part when it is received by the particular office or branch office of the financial institution where the account is carried.

(m) "Request" means a proper request for withdrawal, or a check or order for payment, that complies with all conditions of the account (including special requirements concerning necessary signatures) and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(n) "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and in addition any deposit life insurance proceeds added to the account by reason of the death of a party.

(o) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account. In a trust account, it is not essential that payment to the beneficiary be mentioned in the deposit agreement. The deposit agreement shall indicate the current address of any beneficiary. A trust account does not include (1) a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account or (2) a fiduciary account arising from a fiduciary relation such as attorney-client.

(p) "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

CHAPTER 1046

An act to amend Section 14154.1 of the Welfare and Institutions Code, relating to medical assistance.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 14154.1 of the Welfare and Institutions Code is amended to read:

14154.1. Reimbursement for any Medi-Cal county administrative costs shall be made subject to the requirements specified in the County Administrative Cost Control Plan, established pursuant to Section 14154. However, notwithstanding any other provision of law, for applications taken on or after July 1, 1987, and thereafter, the department shall make allocations for Medi-Cal county administrative expenses taking into consideration all Medi-Cal applications. However, if the department determines that a county is inappropriately processing non-Medi-Cal applications through the Medi-Cal process, then the department shall not allocate state general funds for nonapproved Medi-Cal applications which exceed a specified level. That level shall be determined by multiplying the county's number of approved applications by the ratio of nonapproved applications to approved applications processed by the county during the base period used in the cost control plan which is in effect for the fiscal year the inappropriate processing of non-Medi-Cal applications occurred. Reimbursement to Los Angeles County hospitals shall be limited on the same basis.

CHAPTER 1047

An act to amend Section 99243 of the Public Utilities Code, and to amend Section 2151 of the Streets and Highways Code, relating to transportation.

[Became law without Governor's signature. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 99243 of the Public Utilities Code is amended to read:

99243. (a) The Controller, in cooperation with the department and the operators, shall design and adopt a uniform system of accounts and records, from which the operators shall prepare and submit annual reports of their operation to the transportation

planning agencies having jurisdiction over them and to the Controller within 90 days of the end of the fiscal year. The report shall specify (1) the amount of revenue generated from each source and its application for the prior fiscal year and (2) the data necessary to determine which section, with respect to Sections 99268.1, 99268.2, 99268.3, 99268.4, 99268.5, and 99268.9, the operator is required to be in compliance with in order to be eligible for funds under this article.

(b) As a supplement to the annual report prepared pursuant to subdivision (a), each operator shall include an estimate of the amount of revenues to be generated from each source and its proposed application for the next fiscal year.

(c) The Controller shall instruct the county auditor to withhold payments from the fund to any operator which has not submitted its annual report to the Controller within the time specified by subdivision (a).

(d) In establishing the uniform system of accounts and records, the Controller shall include the data required by the United States Department of Transportation and the department.

(e) Notwithstanding any other law or any regulation, including any California Administrative Code provision, the City of South Lake Tahoe may select, for purposes of this chapter, on a one-time basis, a fiscal year which does not end on June 30. After the city has sent a written notice to the Secretary of the Business, Transportation and Housing Agency and the Controller that the city has selected a fiscal year other than one ending on June 30, the fiscal year selected by the city shall be its fiscal year for all reports required by the state under this chapter.

SEC. 2. Section 2151 of the Streets and Highways Code is amended to read:

2151. On or before the first day of October of each year, the governing body of each county and city shall cause to be made and filed with the Controller a complete report of the expenditures for street or road purposes during the preceding fiscal year ending on the 30th day of June. However, the City of South Lake Tahoe may send, on a one-time basis, a written notice to the Controller that it has selected a fiscal year ending on a date other than June 30, and, in that case, the fiscal year selected by the city shall be its fiscal year for reports under this section.

The Controller shall prescribe the form and contents of the report. The report shall show the amount expended for construction by contract, maintenance by contract, construction by day labor, and maintenance by day labor. For construction and maintenance by day labor, the amount shall include the cost of material, labor, equipment, and overhead for work performed thereunder.

The board of supervisors of each county shall by appropriate action, at any regular or special meeting, designate either the county road commissioner or the county auditor as the person responsible for making and signing the report required by this section. When the road commissioner is designated to make and sign the report, the

county auditor shall certify the report before it is filed with the Controller. When the county auditor is designated to make and sign the report, the road commissioner shall certify the report before it is filed with the Controller. Reports made by each city shall be certified by the city's fiscal officer.

SEC. 3. The Legislature hereby finds and declares that the City of South Lake Tahoe has adopted a fiscal year ending on other than June 30, so that it could better estimate its revenues and expenditures for the following fiscal year and, therefore, a general statute within the meaning of Section 16 of Article IV of the California Constitution cannot be made applicable.

CHAPTER 1048

An act to amend Sections 29675, 29676, 29701, 42945, 42948, and 42971 of, and to add Sections 58938.5 and 64308.5 to, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 29675 of the Food and Agricultural Code is amended to read:

29675. (a) It is unlawful for any person to move any honey, or any container of honey, to which any warning tag or notice has been affixed, except under written permit from an enforcing officer or under his or her specific direction.

(b) A violation of this section is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than three thousand dollars ($3,000) or by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment.

SEC. 2. Section 29676 of the Food and Agricultural Code is amended to read:

29676. (a) It is unlawful for any person to do either of the following:

(1) Refuse to submit any container, subcontainer, load, or display of honey to the inspection of any enforcing officer.

(2) Refuse to stop any vehicle which contains any honey, for the purpose of inspection by an enforcing officer.

(b) A violation of this section is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than three thousand dollars ($3,000) or by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment.

SEC. 3. Section 29701 of the Food and Agricultural Code is amended to read:

29701. (a) Unless otherwise specified, a violation of this chapter

is an infraction punishable by a fine of not more than five hundred dollars ($500).

(b) A conviction of a second or subsequent violation of this chapter within any 12-month period is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment.

SEC. 4. Section 42945 of the Food and Agricultural Code is amended to read:

42945. (a) It is unlawful for any person to remove or dispose of any fruits, nuts, or vegetables, or their containers to which any warning tag or notice has been affixed, or to remove the warning tag or notice from the place where it is affixed, except under a written permit to do so from an enforcing officer or under his or her specific direction.

(b) A violation of this section is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than three thousand dollars ($3,000), by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment.

SEC. 5. Section 42948 of the Food and Agricultural Code is amended to read:

42948. (a) It is unlawful for any person to refuse to submit any container, subcontainer, load, or display of fruits, nuts, or vegetables to the inspection of any enforcing officer, or to refuse to stop any vehicle which contains any fruits, nuts, or vegetables, for the purpose of inspection by an enforcing officer.

(b) A violation of this section is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than three thousand dollars ($3,000) or by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment.

SEC. 6. Section 42971 of the Food and Agricultural Code is amended to read:

42971. (a) Unless otherwise specified, a violation of this division is an infraction punishable by a fine of not more than five hundred dollars ($500).

(b) A conviction of a second or subsequent violation of this division is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment.

SEC. 7. Section 58938.5 is added to the Food and Agricultural Code, to read:

58938.5. (a) Assessments paid on milk pursuant to the requirements of a market milk marketing order or a manufacturing milk marketing order established under this chapter shall be refunded to producers who meet the following criteria:

(1) The producer shipped milk to a processor during the months of June or July 1986.

(2) The producer was not paid, or received only partial payment,

for the milk shipped.

(3) The producer has agreed to repay the refunded assessments to the affected programs if, at a subsequent date, the producer is paid for the milk.

(b) The producer shall receive a full refund of the amount assessed for milk shipped and for which no payment was received. If partial payment was received, the producer shall receive a refund of assessments paid on milk for which payment was not received.

(c) In lieu of payment to the producer, the refund shall be paid to an entity which markets milk or otherwise acts on behalf of a producer who would otherwise qualify for the refund under subdivision (a), if that entity demonstrates to the satisfaction of the director that it paid the assessments for the producer.

(d) If a producer, or an entity referred to in subdivision (c), subsequently receives full or partial payment for milk for which assessments have been refunded, the producer or entity, as the case may be, shall repay the assessments in an amount proportionate to the portion of milk for which payment has been received.

(e) Refunds shall not be made pursuant to this section if the refund would cause a producer to incur an additional assessment obligation to the National Milk Promotion Program.

(f) The director shall adopt procedures for refunding assessments in accordance with this section. The procedures 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. 8. Section 64308.5 is added to the Food and Agricultural Code, to read:

64308.5. (a) Fees paid on milk pursuant to this chapter shall be refunded to producers who meet the following criteria:

(1) The producer shipped the milk to a processor during the months of June or July 1986.

(2) The producer was not paid, or received only partial payment, for the milk shipped.

(3) The producer has agreed to repay the refunded fees to the affected programs if, at a subsequent date, the producer is paid for the milk.

(b) The producer shall receive a full refund of the fees paid on milk shipped for which no payment was received. If partial payment was received the producer shall receive a refund of the fees paid on milk for which payment was not received.

(c) In lieu of payment to the producer, the refund shall be paid to an entity which markets milk or otherwise acts on behalf of a producer who would otherwise qualify for the refund under subdivision (a) if that entity demonstrates to the satisfaction of the director that it paid the fees for the producer.

(d) If a producer, or an entity referred to in subdivision (c), subsequently receives full or partial payment for milk for which fees have been refunded, the producer or entity, as the case may be, shall repay the fees in an amount proportionate to the portion of milk for

which payment has been received.

(e) Refunds shall not be made pursuant to this section if the refund would cause a producer to incur an additional assessment obligation to the National Milk Promotion Program.

(f) The director shall adopt procedures for refunding fees in accordance with this section. Those procedures 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.

CHAPTER 1049

An act to amend Section 31304 of the Vehicle Code, relating to hazardous materials.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 31304 of the Vehicle Code is amended to read:

31304. (a) The transportation of hazardous materials and hazardous waste for which the display of placards or markings is required pursuant to Section 27903 may be restricted or prohibited, by the Department of the California Highway Patrol, after consultation with the Department of Transportation, with regard to state or interstate highways, or by a city or county by ordinance or resolution, after formal notice to the Department of the California Highway Patrol and with the concurrence of their appropriate transportation planning agency defined in Section 29532 of the Government Code, with regard to specified highways under their control, if all of the following requirements are met:

(1) The respective highway is appreciably less safe than a reasonable alternate highway as determined by using either of the following criteria:

(A) The "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials" prepared by the Federal Highway Administration (FHWA A-IP-80-15).

(B) The Department of the California Highway Patrol or the city or county, whichever has jurisdiction pursuant to subdivision (a), determines that the respective highway is located within the watershed of a drinking water reservoir which meets all of the following requirements:

(i) The reservoir is owned and operated by a district, as defined in Section 11503 of the Public Utilities Code.

(ii) The reservoir has a capacity of at least 10,000 acre feet.

(iii) The reservoir directly serves a filter plant.

(iv) The reservoir is impounded by a dam, as defined in Section

6002 of the Water Code.

(v) The reservoir's shoreline is located within 500 feet of the highway.

(2) The restriction or prohibition on the use of the highway pursuant to this section is not precluded or preempted by federal law.

(3) The restriction or prohibition does not eliminate necessary access to local pickup or delivery points consistent with safe vehicle operation; does not eliminate reasonable access to fuel, repairs, rest, or food facilities that are designed and intended to accommodate commercial vehicle parking, when that access is consistent with safe vehicle operation and when the facility is within one-half road mile of points of entry or exit from the state or interstate highway being used; or does not restrict or prohibit the use of highways when no other lawful alternative exists.

(4) Written concurrence has been obtained from affected surrounding jurisdictions that the proposed restriction or prohibition is not incompatible with through transportation. If written concurrence is not granted by one of the affected surrounding jurisdictions, that action may be appealed to the appropriate transportation planning agency for final resolution.

(5) The highway is posted by the agency responsible for highway signs on that highway in conformity with standards of the Department of Transportation.

(6) A list of the routes restricted or prohibited is submitted to the Department of the California Highway Patrol.

(7) The highway is included in a list of highways restricted or prohibited pursuant to this section which is published by the Department of the California Highway Patrol and is available to interested parties for not less than 14 days.

(b) Notwithstanding any prohibition or restriction adopted pursuant to subdivision (a), deviation from restricted or prohibited routes is authorized in an emergency or other special circumstances with the concurrence of a member of the agency having traffic law enforcement authority for the highway.

CHAPTER 1050

An act to amend Section 189.1 of the Streets and Highways Code, relating to transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 189.1 of the Streets and Highways Code is amended to read:

189.1. Notwithstanding any other provision of law, State Transportation District 12, consisting of the County of Orange, is hereby created. The district shall have a separate district organization, staff, and facilities in the county.

SEC. 2. The sum of four million one hundred thousand dollars ($4,100,000) is hereby appropriated from the State Highway Account in the State Transportation Fund to the Department of Transportation for expenditure by the department for the initial cost of establishing a separate district organization, staff, and facilities for State Transportation District 12 in Orange County, as directed by executive order of the Governor, and for an independent audit of the costs relating to establishing that separate district organization.

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 shall go into immediate effect. The facts constituting the necessity are:

In order to assure a smooth operation and continue with the provision of adequate transportation facilities for Orange County, it is necessary that this act take effect immediately.

CHAPTER 1051

An act to amend Sections 10205 and 10209 of the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 10205 of the Unemployment Insurance Code is amended to read:

10205. The panel shall do all of the following:

(a) Solicit proposals and write contracts on the basis of proposals made directly to it and on the basis of the recommendations of the local review panels. Contracts for the purpose of providing employment training may be written with any of the following:

(1) An employer or group of employers.

(2) A training agency.

(3) A private industry council with the approval of the appropriate local elected officials in the service delivery area.

(4) A grant recipient or administrative entity selected pursuant to Section 103 of the Federal Job Training Partnership Act and Section 15021, with the approval of the local private industry council and the

appropriate local elected officials. These contracts shall be in the form of fixed-fee performance contracts. Notwithstanding any provision of law to the contrary, contracts entered into pursuant to this chapter shall not be subject to competitive bidding procedures. No trainee shall receive employment training under this chapter for a period of more than 18 months. Contracts for training may be written for a period not to exceed 24 months for the purpose of administration by the panel and the contracting employer or any group of employers acting jointly or any training agency for the purpose of providing employment training.

(b) Allocate the Employment Training Fund. In doing so, the panel shall seek to facilitate the employment of the maximum number of eligible participants in jobs with definite career potential and long-term job security. In no case shall the statewide allocation be based solely on population. Nothing in this chapter shall be construed to preclude the panel from entering into contracts for the provision of training in multijurisdictional areas of the state. In writing contracts, priority shall be given to employers and training for employers who are expanding their business enterprises in this state, to employers and training for employers who are establishing enterprises in areas targeted for economic development by the Department of Commerce, and to employers and training for employers in industries in which there are critical skills shortages. Preference shall be given to apprenticeship and similar training in which a person is employed at the commencement of training.

(c) Establish minimum standards for the consideration of proposals, which shall include, but not be limited to, the identification of employers who will employ successful trainees, the number of jobs available, the skill requirements for the identified jobs, the projected cost per trainee, and the wage level of the available jobs. No proposal shall be considered which proposes training for employment covered by a collective bargaining agreement unless the signatory labor organization agrees in writing.

(d) Ensure the provision of adequate fiscal and accounting controls for, monitoring and auditing of, and other appropriate technical and administrative assistance to, projects funded by this chapter.

(e) Provide for evaluation of projects funded by this chapter. Individual project evaluations shall contain a summary description of the project, the number of persons entering training, the number of persons completing training, the number of persons employed at the end of the project, the number of persons still employed three months after the end of the project, the wages paid, the total costs of the project, and the total reimbursement received from the Employment Training Fund.

(f) Report annually to the Legislature, by November 30, on projects operating during the previous state fiscal year. These annual reports shall provide separate summaries of all of the following:

(1) Projects completed during the year, including their individual

and aggregate performance and cost.

(2) Projects not completed during the year, briefly describing each project and identifying approved contract amounts by contract and for this category as a whole, and identifying any projects in which funds are expected to be disencumbered.

(3) Projects terminated prior to completion and the reasons for the termination.

In addition, based upon its experience in administering job training projects, the panel shall include in these reports policy recommendations concerning the impact of job training and the panel's program on economic development, labor-management relations, employment security, and other related issues. To assist in the preparation of the policy recommendations, the chair of the panel may appoint an advisory research council.

(g) Expedite the processing of contracts for firms considering locating or expanding businesses in the state, as determined by the Department of Commerce.

SEC. 2. Section 10209 of the Unemployment Insurance Code is amended to read:

10209. (a) Contracts shall only be made for job-linked training, including basic skills training, which provides specific skills for career advancement or which is preparatory for, and leads directly to, jobs with definite career potential and long-term job security.

(b) Payments shall be made in accordance with a performance contract under which partial payments may be made during training, a partial payment may be made on placement or retention of each trainee, and not less than 25 percent of the negotiated fee is withheld until the trainee has been retained in employment for 90 days after the end of training with a single employer, except for those occupations in which it is not customary for a worker to be employed 90 consecutive days with a single employer. In these latter cases, the panel may substitute a period similar to the probationary period customary to the occupation. In no case shall the probationary period amount to less than 500 work hours. In no case shall any payment be considered to have been earned until the trainee has been retained in employment for 90 days or the equivalent probationary period for an occupation in which it is not customary for a worker to be employed 90 consecutive days with a single employer.

CHAPTER 1052

An act to amend Sections 25806, 34700, 37203, and 37210 of, and to add Sections 22284 and 36950.1 to, the Water Code, relating to water.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987]

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

SECTION 1. Section 22284 is added to the Water Code, to read:

22284. A district may prescribe by rule that when any charges fixed for services under Section 22280 become delinquent, the charges may be collected in accordance with procedures specified in Section 25806.

SEC. 2. Section 25806 of the Water Code is amended to read:

25806. (a) In case any charges for water and other services or either remain unpaid, the amount of the unpaid charges may, in the discretion of the district:

(1) If unpaid at the time specified for delivery of the assessment book to the collector, be added to and become a part of the annual assessment levied upon the real property upon which the water for which the charges are unpaid was used and upon the real property subject to the charges for any other district services and shall constitute a lien on that real property. However, if, during the year preceding the date on which the first installment of real property taxes which evidence the charges appears on the roll, any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, then the lien which would otherwise be imposed by this subdivision shall not be added to and become part of the annual assessment nor shall it attach to the real property.

(2) Be secured at any time by filing for record in the office of the county recorder of any county, a certificate specifying the amount of the charges and the name and address of the person liable therefor.

From the time of recordation of the certificate, the amount required to be paid together with interest and penalty constitutes a lien upon all real property in the county owned by the person or afterwards, and before the lien expires, acquired by him or her. The lien has the force, priority, and effect of a judgment lien and shall continue for 10 years from the date of the filing of the certificate unless sooner released or otherwise discharged. The lien may, within 10 years from the filing of the certificate or within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by filing for record a new certificate in the office of the county recorder of any county and from the time of the filing the lien shall be extended to the real property in such county for 10 years unless sooner released or otherwise discharged.

When the charges have become delinquent, they may be collected in the manner provided for the collection of delinquent assessments in Chapter 5 (commencing with Section 26075) and Chapter 6 (commencing with Section 26225) of Division 11 of Part 10.

(b) Where the county assumes the responsibility of assessment and collection pursuant to Chapter 7 (commencing with Section 26500), the amount of the unpaid charges may be added to, and become part of, the annual assessment levied upon the real property upon which the water for which the charges are unpaid was used and upon the real property subject to the charges for any other district services and shall constitute a lien on that real property upon recordation of the order confirming the assessment in the office of the county recorder of the county in which the real property is situated. However, if, during the year preceding the date on which the first installment of real property taxes which evidence the charges appears on the roll, any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, then the lien which would otherwise be imposed by this subdivision shall not attach to the real property and the costs of the water and services or either, as confirmed, relating to the property shall be transferred to the unsecured roll for collection.

SEC. 3. Section 34700 of the Water Code is amended to read:

34700. (a) Each director shall be a holder of title to land within the district.

(b) Notwithstanding subdivision (a), in the Angiola Water District, each director shall be a holder of title to land within the district, or an officer, employee, or legal representative of a holder of title to land within the district, or an individual whose service as a director has been approved in writing by a holder of title to land within the district. This subdivision, applicable only to the Angiola Water District, is necessary because of unique and special water management problems in the area included within the district.

SEC. 4. Section 36950.1 is added to the Water Code, to read:

36950.1. As used in this chapter and Chapter 5 (commencing with Section 37050), Chapter 6 (commencing with Section 37150), and Chapter 7 (commencing with Section 37175), "assessment" includes standby charges and other charges levied for the use of district water.

SEC. 5. Section 37203 of the Water Code is amended to read:

37203. (a) On or before December 31st of any year the board may by resolution elect to proceed under this part for the levy, collection, and enforcement of any or all assessments, and thereafter until termination of that election the provisions of this part shall apply to the levy, collection, and enforcement of those assessments. The board by resolution may at any time on or before December 31st of any year terminate its election to proceed under this part, and thereafter the provisions of this part shall no longer apply to the levy, collection, and enforcement of those assessments. On or before

January 1st following the adoption of either of those resolutions, a certified copy thereof shall be filed with the auditor, assessor, tax collector and treasurer of each county within which a district is located and with the State Board of Equalization. There shall also be filed with the county assessor and the State Board of Equalization a statement as required by Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code.

(b) Notwithstanding subdivision (a), the board may, by resolution, elect at any time to proceed under this part only for the collection and enforcement of delinquent assessments, including standby and other charges, and thereafter until termination of that election this part shall apply to the collection and enforcement of the delinquent assessments. A certified copy of the resolution shall be filed with the auditor, assessor, tax collector, and treasurer of each county within which the district is located and the assessments shall thereafter be included in all county tax statements.

SEC. 6. Section 37210 of the Water Code is amended to read:

37210. As used in this part, "assessment" includes "standby charges" and other charges levied for the use of district water.

CHAPTER 1053

An act to amend Sections 18906, 18907, 18908, 18909, 18910, 18911, 18913, 18916, 18917.3, 18918, 18920, 18921, 18923, 18927, 18928, 18930, 18932, 18934.5, 18936, 18937, 18938, 18938.5, 18940, 18942, 18943, and 18944 of the Health and Safety Code, relating to building standards.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 18906 of the Health and Safety Code is amended to read:

18906. "Adoption" or "adopt" means, with respect to the procedure for promulgation of a building standard, the final act of a state agency responsible for the administration of a program in promulgating a building standard for such program.

SEC. 2. Section 18907 of the Health and Safety Code is amended to read:

18907. "Approval" means, with respect to the procedure for promulgation of a building standard, the action of approval by the State Building Standards Commission. Until there is approval of the standard by the commission, it shall be a proposed building standard.

SEC. 3. Section 18908 of the Health and Safety Code is amended to read:

18908. (a) "Building" means any structure used for support or shelter of any use or occupancy. "Structure" means that which is

built or constructed, an edifice or building of any kind or any piece of work artificially built or composed of parts joined together in some definite manner, except any mobilehome as defined in Section 18008, manufactured home, as defined in Section 18007, special purpose commercial coach, as defined in Section 18012.5, and recreational vehicle, as defined in Section 18010.

(b) "Building" includes a structure wherein things may be grown, made, produced, kept, handled, stored, or disposed of.

(c) All appendages, accessories, apparatus, appliances, and equipment installed as a part of building or structure shall be deemed to be a part thereof.

(d) "Building" does not include machinery, equipment, or appliances installed for manufacture or process purposes only, any construction installations which are not a part of a building, or any tunnel, mine shaft, highway, or bridge.

SEC. 4. Section 18909 of the Health and Safety Code is amended to read:

18909. (a) "Building standard" means any rule, regulation, order, or other requirement, including any amendment or repeal of such a requirement, which specifically regulates, requires, or forbids the method of use, properties, performance, or types of materials used in the construction, alteration, improvement, repair, or rehabilitation of a building, structure, factory-built housing, or other improvement to real property, including fixtures therein, and as determined by the commission.

(b) Except as provided in subdivision (d), "building standard" includes architectural and design functions of a building or structure, including, but not limited to, number and location of doors, windows, and other openings, stress or loading characteristics of materials, and methods of fabrication, clearances, and other functions.

(c) "Building standard" does not include a regulation, rule, or order relating to the enforcement of a building standard, including the penalties for failure to comply with a building standard.

(d) "Building standard" does not include any safety regulations which any state agency is authorized to adopt relating to the operation of machinery and equipment used in manufacturing, processing, or fabricating, including, but not limited to, warehousing and food processing operations, but not including safety regulations relating to permanent appendages, accessories, apparatus, appliances, and equipment attached to the building as a part thereof, as determined by the commission.

(e) "Building standard" does not include temporary scaffoldings and similar temporary safety devices and procedures, which are used in the erection, demolition, moving, or alteration of buildings.

(f) "Building standard" does not include any regulation relating to operations or procedures established for the administration of a program of a state agency or for the internal management of a state agency.

(g) "Building standard" does not include any regulation, rule,

order, or standard which pertains to mobilehomes, manufactured homes, commercial coaches, special purpose commercial coaches, or recreational vehicles.

(h) "Building standard" does not include any regulation, rule, or order or standard which pertains to a mobilehome park, recreational vehicle park, temporary recreational vehicle park, or travel trailer park, except that "building standard" includes the construction of permanent buildings and plumbing, electrical, and fuel gas equipment and installations within permanent buildings in mobilehome parks, recreational vehicle parks, temporary recreational vehicle parks, or travel trailer parks. For purposes of this subdivision, "permanent building" means any permanent structure constructed in the mobilehome park, recreational vehicle park, temporary recreational vehicle park, or travel trailer park which is a permanent facility under the control and ownership of the park operator.

(i) "Building standard" does not include any regulation, rule, order, or standard which pertains to mausoleums regulated under Part 5 (commencing with Section 9501) of Division 8.

SEC. 5. Section 18910 of the Health and Safety Code is amended to read:

18910. "Code" means the State Building Standards Code, including the triennial editions and supplements.

SEC. 6. Section 18911 of the Health and Safety Code is amended to read:

18911. "Codification" or "codify" means to arrange building standards in the publication format of the code as determined by the commission.

SEC. 7. Section 18913 of the Health and Safety Code is amended to read:

18913. "Emergency standard" means either of the following:

(a) A building standard or an order of repeal of a building standard filed for publication in the code by the commission pursuant to Section 11346.1 of the Government Code.

(b) A building standard adopted by the Occupational Safety and Health Standards Board which is at least as effective as a federal standard promulgated under Section 6 of the federal Occupational Safety and Health Act of 1970 (Public Law 91-596).

SEC. 8. Section 18916 of the Health and Safety Code is amended to read:

18916. "Model code" means any building code drafted by private organizations or otherwise, and shall include, but not be limited to, the latest edition of the following:

(a) Uniform Housing Code of the International Conference of Building Officals.

(b) The Uniform Building Code of the International Conference of Building Officials.

(c) The Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials.

(d) The Uniform Mechanical Code of the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials.

(e) The National Electrical Code of the National Fire Protection Association.

(f) The Uniform Fire Code of the International Conference of Building Officials and the Western Fire Chiefs Association, Inc.

SEC. 9. Section 18917.3 of the Health and Safety Code is amended to read:

18917.3. "Publication" or "publish" means to print and make available to the public the State Building Code.

SEC. 10. Section 18918 of the Health and Safety Code is amended to read:

18918. "State agency" means a state agency as defined in Section 11000 of the Government Code.

SEC. 10.5. Section 18920 of the Health and Safety Code is amended to read:

18920. There is continued in existence in the State and Consumer Services Agency a State Building Standards Commission consisting of the Secretary of State and Consumer Services Agency, and 10 members appointed by the Governor subject to confirmation by the Senate.

SEC. 11. Section 18921 of the Health and Safety Code is amended to read:

18921. (a) The appointed members of the commission shall be selected from, and represent the public, design professions, the building and construction industry, local government building officials, fire and safety officials, and labor in accordance with the following:

(b) Four members shall be appointed from among the professions and industries concerned with building construction as follows:

(1) An architect.

(2) A mechanical or electrical engineer or fire protection engineer.

(3) A structural engineer.

(4) A licensed contractor.

(c) Three members shall be appointed from among the general public at least one of whom shall be a physically handicapped person.

(d) One member shall be appointed from organized labor in the building trades.

(e) One member shall be appointed who is a local building official.

(f) One member shall be appointed who is a local fire official.

(g) One member shall be experienced and knowledgeable in barrier free architecture and aware of, and sensitive to, the requirements necessary to ensure public buildings are accessible to, and usable by, the physically handicapped.

As used in this section, "physically handicapped" means persons who have permanent mobility impairments which affect ambulation

due to cerebral palsy, poliomyelitis, spinal cord injury, amputation, and other conditions or diseases which reduce mobility or require the use of crutches, canes, or wheelchairs.

SEC. 12. Section 18923 of the Health and Safety Code is amended to read:

18923. (a) The term of office of members of the commission shall be four years and they shall hold office until the appointment and qualification of their successors, not to exceed 180 days after such term is expired.

(b) The terms of members of the commission shall be staggered based on the following cycle:

(1) The terms of two members shall expire on January 1, 1981.

(2) The terms of three members shall expire on January 1, 1982.

(3) The terms of two members shall expire on January 1, 1983.

(4) The terms of three members shall expire on January 1, 1984.

(c) Prior members of the commission may be reappointed.

(d) In the event of a vacancy prior to the expiration of a term, an appointment shall be made to fill the balance of the unexpired term.

SEC. 13. Section 18927 of the Health and Safety Code is amended to read:

18927. The commission may appoint from the design professions, the building and construction industry, the affected general public, and interested governmental agencies, appropriate advisory panels to advise the commission and its staff with respect to building standards. The persons appointed to such panels shall be specifically knowledgeable and qualified in the type of work embraced by the building standards in question. Such persons shall serve without compensation, but may receive actual necessary travel expenses.

SEC. 14. Section 18928 of the Health and Safety Code is amended to read:

18928. (a) Each state agency adopting a model code shall reference the most recent edition of applicable model codes.

(b) Each state agency adopting a model code shall adopt the most recent editions of the model codes, as amended by the adopting agency, within one year after the date of publication of the model codes. The "date of publication of a model code" is either of the following:

(1) The date of publication printed in the model code. If only a month and year are shown by the model code adopting agency or body, the date of publication shall be considered to be the last day of the month shown.

(2) The date determined by the commission, if no publication date is shown in the model code. The commission shall notify all adopting agencies of its determination within 15 days.

(c) If the adopting agencies fail to comply with subdivision (b), the commission shall convene a committee to recommend to the commission the adoption, amendment, or repeal, on the agencies' behalf, of the most recent editions of the model codes.

SEC. 15. Section 18930 of the Health and Safety Code is amended

to read:

18930. (a) Any building standard adopted by state agencies shall be submitted, to and approved by, the State Building Standards Commission prior to codification. Prior to submission to the commission, building standards adopted by state agencies shall be adopted in compliance with the procedures specified in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. Building standards adopted by state agencies and submitted to the commission for approval shall be accompanied by an analysis written by the adopting agency which shall, to the satisfaction of the commission, justify the approval thereof in terms of the following criteria:

(1) The proposed building standard does not conflict with, overlap, or duplicate other building standards.

(2) The proposed building standard is within the parameters established by enabling legislation and is not expressly within the exclusive jurisdiction of another agency.

(3) The public interest requires the adoption of the building standards.

(4) The proposed building standard is not unreasonable, arbitrary, unfair, or capricious, in whole or in part.

(5) The cost to the public is reasonable based on the overall benefit to be derived from the building standards.

(6) The proposed building standard is not unnecessarily ambiguous or vague, in whole or in part.

(7) The applicable national specifications, published standards, and model codes have been incorporated therein as provided in this part, where appropriate.

(A) If a national specification, published standard, or model code does not adequately address the goals of the state agency, a statement defining the inadequacy shall accompany the proposed building standard when submitted to the commission.

(B) If there is no national specification, published standard, or model code that is relevant to the proposed building standard, the state agency shall prepare a statement informing the commission and submit that statement with the proposed building standard.

(8) The format of the proposed building standards is consistent with that adopted by the commission.

(9) The proposed building standard, if intended to promote fire and panic safety, has the written approval of the State Fire Marshal.

(b) In reviewing building standards submitted for its approval, the commission shall consider only the following:

(1) Except as provided in subdivision (b) of Section 11342.3 of the Government Code, the record of the proceedings of the adopting agency.

(2) The evidence submitted to, and considered by, the adopting agency.

(c) The commission shall give great weight to the determinations and analysis of the adopting agency on each of the criteria for

approval set forth in subdivision (a). Any factual determinations of the adopting agency shall be considered conclusive by the commission unless the commission specifically finds, and sets forth its reasoning in writing, that such factual determination is arbitrary and capricious or substantially unsupported by the evidence considered by the adopting agency.

Whenever the commission makes such a finding, it shall return the standard to the adopting agency for a reexamination of its original determination of the disputed fact.

(d) Whenever a building standard is principally intended to protect the public health and safety, its adoption shall not be a "factual determination" for purposes of subdivision (c). Whenever a building standard is principally intended to conserve energy or other natural resources, the commission shall consider or review the cost to the public or benefit to be derived as a "factual determination" pursuant to subdivision (c). Whenever a building standard is intended to promote fire and panic safety, each agency shall, unless adopted by the State Fire Marshal, submit the building standard to the State Fire Marshal for prior approval.

(e) Whenever the commission finds, pursuant to paragraph (2) of subdivision (a), that a building standard is adopted by an adopting agency pursuant to statutes requiring adoption of the building standard, the commission shall not consider or review whether the adoption is in the public interest pursuant to paragraph (3) of subdivision (a).

SEC. 16. Section 18932 of the Health and Safety Code is amended to read:

18932. (a) The code shall indicate the agency having responsibility vested by law for the administration of each building standard and the occupancy or occupancies affected by each such building standard.

(b) The code shall include an index and reference guide.

(c) The commission shall establish the format for the code to conform it as nearly as it deems practicable with the model codes.

SEC. 17. Section 18934.5 of the Health and Safety Code is amended to read:

18934.5. Where no state agency has the authority to adopt building standards applicable to state buildings, the commission shall adopt, approve, codify, and publish building standards providing the minimum standards for the design and construction of state buildings, including buildings constructed by the Trustees of the California State University and, to the extent permitted by law, to buildings designed and constructed by the Regents of the University of California. Building standards of the commission for state buildings shall comply with the criteria in subdivision (a) of Section 18930.

SEC. 18. Section 18936 of the Health and Safety Code is amended to read:

18936. The commission shall mail notices of meetings with

respect to its proposed action on any building standards to any design profession organizations, chambers of commerce, consumer groups, building and construction industry organizations, governmental agencies, and other parties and organizations that have submitted a written request therefor at least 15 days prior to any meeting thereon, provided that the failure to do so shall not invalidate any commission action.

SEC. 19. Section 18937 of the Health and Safety Code is amended to read:

18937. (a) Emergency standards shall be acted on by the commission within 30 days and, except for building standards adopted by the Occupational Safety and Health Standards Board which are at least as effective as a federal standard promulgated under Section 6 of the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), only when the adopting agencies have made the finding of emergency required by Sections 11346.1 and 11346.5 of the Government Code and have adopted the emergency standard in compliance with Section 11346.1 of the Government Code, and the commission concurs with that finding. Both the concurrence and the approval of the emergency standards require an affirmative vote of two-thirds of the members of the commission attending a meeting, or not less than six affirmative votes, whichever is greater.

(b) Emergency standards approved by the commission pursuant to subdivision (a) shall be filed by the commission pursuant to Section 11346.1 of the Government Code and shall be subject to the provisions of that section.

SEC. 20. Section 18938 of the Health and Safety Code is amended to read:

18938. (a) Building standards shall be filed with the Secretary of State and codified only after they have been approved by the commission and shall not be published in any other title of the California Administrative Code. Emergency standards shall be filed with the Secretary of State and shall take effect only after they have been approved by the commission as required by Section 18937. The filing of building standards adopted or approved pursuant to this part, or any certification with respect thereto, with the Secretary of State, or elsewhere as required by law, shall be done solely by the commission.

(b) An adoption, amendment, or repeal of a building standard shall only become effective upon its publication in the triennial edition of the State Building Standards Code or one of its supplements, or at any later date as approved by the Building Standards Commission. This subdivision shall not apply to emergency standards, and standards approved pursuant to subdivision (b) of Section 142.3 of the Labor Code and published pursuant to subdivision (b) of Section 18943.

(c) This section shall not be applicable to the time limits set forth in Sections 17922 and 17958 for approval of uniform codes and for

changes by local agencies in the State Building Standards Code.

SEC. 21. Section 18938.5 of the Health and Safety Code is amended to read:

18938.5. Only those building standards approved by the commission, and which are effective at the local level at the time an application for a building permit is submitted, apply to construction performed under that building permit.

SEC. 22. Section 18940 of the Health and Safety Code is amended to read:

18940. Building standards approved by the commission shall be incorporated into the code and shall not be incorporated into other individual titles of state agencies in the California Administrative Code.

SEC. 23. Section 18942 of the Health and Safety Code is amended to read:

18942. (a) The commission shall publish, or cause to be published, editions of the code in its entirety once in every three years. In each intervening year the commission shall publish, or cause to be published, supplements as necessary. For emergency standards defined in subdivision (a) of Section 18913, an emergency standards supplement shall be published whenever the commission determines it is necessary. The commission shall also publish, for emergency standards defined in subdivision (b) of Section 18913 and for building standards approved pursuant to subdivision (b) of Section 142.3 of the Labor Code, a semiannual supplement, or a more frequent supplement if required by federal law.

(b) Except emergency standards and building standards approved pursuant to subdivision (b) of Section 142.3 of the Labor Code, no building standards or regulations shall be published in the triennial edition of the code or annual supplement less than 90 days after approval by the commission.

(c) Emergency standards defined in subdivision (a) of Section 18913 shall become effective when approved by the commission, and filed with the Secretary of State, or upon any later date specified therein, and remain in effect as provided by Section 11346.1 of the Government Code and Section 18937 of this code. Emergency standards shall be distributed as soon as practicable after publication to all interested and affected parties. Notice of repeal pursuant to Section 11346.1 of the Government Code of emergency standards defined in subdivision (a) of Section 18913 within the period specified by that section shall also be given to the parties by the affected agencies promptly after the termination of the statutory period pursuant to Section 11346.1 of the Government Code.

(d) The commission may publish, stockpile, and sell at a reasonable price the code and any materials incorporated therein by reference if it deems the latter is insufficiently available to the public, or unavailable at a reasonable price. Each state department concerned and each city and county shall have an up-to-date copy of the code available for public inspection.

SEC. 24. Section 18943 of the Health and Safety Code is amended to read:

18943. (a) Building standards in individual titles of the California Administrative Code other than the State Building Standards Code shall have no force nor effect after January 1, 1985.

(b) Building standards adopted by the Occupational Safety and Health Standards Board shall be published as provided in Section 18942 by the commission in the State Building Standards Code. Those building standards may also be published by the Occupational Safety and Health Standards Board in other provisions in Title 8 of the California Administrative Code prior to publication in the State Building Standards Code if that other publication includes an appropriate identification of building standards contained in the other publication.

SEC. 25. Section 18944 of the Health and Safety Code is amended to read:

18944. State agencies shall adopt regulations for publication in the titles of the California Administrative Code containing other regulations of such agency to identify, by reference, the appropriate sections of the State Building Standards Code containing those building standards for which that agency has enforcement responsibility.

CHAPTER 1054

An act to amend Sections 1208 and 6031.1 of the Penal Code, relating to prisoners.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 1208 of the Penal Code is amended to read:

1208. (a) The provisions of this section, insofar as they relate to employment, shall be operative in any county in which the board of supervisors by ordinance finds, on the basis of employment conditions, the state of the county jail facilities, and other pertinent circumstances, that the operation of this section, insofar as it relates to employment, in that county is feasible. The provisions of this section, insofar as they relate to education, shall be operative in any county in which the board of supervisors by ordinance finds, on the basis of education conditions, the state of the county jail facilities, and other pertinent circumstances, that the operation of this section, insofar as it relates to education, in that county is feasible. In any ordinance the board shall prescribe whether the sheriff, the probation officer, the director of the county department of corrections, or the superintendent of a county industrial farm or

industrial road camp in the county shall perform the functions of the work furlough administrator. The board may, in that ordinance, provide for the performance of any or all functions of the work furlough administrator by any one or more of those persons, acting separately or jointly as to any of the functions; and may, by a subsequent ordinance, revise the provisions within the authorization of this section. The board of supervisors may also terminate the operativeness of this section, either with respect to employment or education in the county if it finds by ordinance that because of changed circumstances, the operation of this section, either with respect to employment or education in that county is no longer feasible.

Notwithstanding any other provision of law, the board of supervisors may by ordinance designate a facility for confinement of prisoners classified for the work furlough program and designate the work furlough administrator as the custodian of the facility. The work furlough administrator may, with the approval of the board of supervisors, enter into contracts with appropriate public or nonprofit private agencies or private entities to provide a facility and services for the housing, sustenance, counseling, supervision, and related services for such inmates as are eligible for work furlough. No agency or private entity entering into a contract may itself employ any person who is in the work furlough program. The sheriff or director of the county department of corrections, as the case may be, is authorized to transfer custody of prisoners to the work furlough administrator to be confined in a facility for the period during which they are in the work furlough program.

All privately operated work furlough facilities and programs used for the detention of persons sentenced into the custody of the sheriff, the director of a county department of corrections, or the chief probation officer, shall be under the jurisdiction of, and subject to the terms of a contract entered into with, the work furlough administrator. Each contract shall include, but not be limited to, a provision whereby the private agency or entity agrees to operate in compliance with all appropriate state and local building, zoning, health, safety, and fire statutes, ordinances, and regulations and the minimum jail standards for Type IV facilities as established by regulations adopted by the Board of Corrections. The private agency or entity shall select and train its personnel in accordance with selection and training requirements adopted by the Board of Corrections as set forth in Subchapter 1 (commencing with Section 100) of Chapter 1 of Division 1 of Title 15 of the California Administrative Code. Failure to comply with the appropriate health, safety, and fire laws or minimum jail standards adopted by the board may be cause for termination of the contract; and upon discovery of a failure to comply with these requirements, the work furlough administrator shall notify the privately operated program director that the contract may be canceled if the specified deficiencies are not corrected within 60 days.

All private work furlough facilities and programs shall be inspected biennially by the Board of Corrections unless the work furlough administrator requests an earlier inspection pursuant to Section 6031.1. Each private agency or entity shall pay a fee to the Board of Corrections commensurate with the cost of those inspections and a fee commensurate with the cost of the initial review of the facility.

(b) When a person is convicted of a misdemeanor and sentenced to the county jail, or is imprisoned therein for nonpayment of a fine, for contempt, or as a condition of probation for any criminal offense, the work furlough administrator may, if he or she concludes that the person is a fit subject therefor, direct that the person be permitted to continue in his or her regular employment, if that is compatible with the requirements of subdivision (d), or may authorize the person to secure employment for himself or herself, unless the court at the time of sentencing or committing has ordered that the person not be granted work furloughs. The work furlough administrator may, if he or she concludes that the person is a fit subject therefor, direct that the person be permitted to continue in his or her regular educational program, if that is compatible with the requirements of subdivision (d), or may authorize the person to secure education for himself or herself, unless the court at the time of sentencing has ordered that person not be granted work furloughs.

(c) If the work furlough administrator so directs that the prisoner be permitted to continue in his or her regular employment or educational program, the administrator shall arrange for a continuation of that employment or education, so far as possible without interruption. If the prisoner does not have regular employment or a regular educational program, and the administrator has authorized the prisoner to secure employment or education for himself or herself, the prisoner may do so, and the administrator may assist the prisoner in doing so. Any employment or education so secured shall be suitable for the prisoner. The employment or educational program, if the educational program includes earnings by the prisoner, shall be at a wage at least as high as the prevailing wage for similar work in the area where the work is performed and in accordance with the prevailing working conditions in that area. In no event may any employment or educational program involving earnings by the prisoner be permitted where there is a labor dispute in the establishment in which the prisoner is, or is to be, employed or educated.

(d) Whenever the prisoner is not employed or being educated and between the hours or periods of employment or education, the prisoner shall be confined in the facility designated by the board of supervisors for work furlough confinement unless the work furlough administrator directs otherwise. If the prisoner is injured during a period of employment or education, the work furlough administrator shall have the authority to release him or her from the facility for continued medical treatment by private physicians or at medical facilities at the expense of the employer, worker's compensation

insurer, or the prisoner. The release shall not be construed as assumption of liability by the county or work furlough administrator for medical treatment obtained.

The work furlough administrator may release any prisoner classified for the work furlough program for a period not to exceed 72 hours for medical, dental, or psychiatric care, or for family emergencies or pressing business which would result in severe hardship if the release were not granted, or to attend those activities as the administrator deems may effectively promote the prisoner's successful return to the community, including, but not limited to, an attempt to secure housing, employment, entry into educational programs, or participation in community programs.

(e) The earnings of the prisoner may be collected by the work furlough administrator, and it shall be the duty of the prisoner's employer to transmit the wages to the administrator at the latter's request. Earnings levied upon pursuant to writ of execution or in other lawful manner shall not be transmitted to the administrator. If the administrator has requested transmittal of earnings prior to levy, that request shall have priority. In a case in which the functions of the administrator are performed by a sheriff, and the sheriff receives a writ of execution for the earnings of a prisoner subject to this section but has not yet requested transmittal of the prisoner's earnings pursuant to this section, the sheriff shall first levy on the earnings pursuant to the writ. When an employer or educator transmits earnings to the administrator pursuant to this subdivision, the sheriff shall have no liability to the prisoner for those earnings. From the earnings the administrator shall pay the prisoner's board and personal expenses, both inside and outside the jail, and shall deduct so much of the costs of administration of this section as is allocable to the prisoner or if the prisoner is unable to pay that sum, such lesser sum as is reasonable, and, in an amount determined by the administrator, shall pay the support of the prisoner's dependents, if any. If sufficient funds are available after making the foregoing payments, the administrator may, with the consent of the prisoner, pay, in whole or in part, the preexisting debts of the prisoner. Any balance shall be retained until the prisoner's discharge and thereupon shall be paid to him or her.

(f) The prisoner shall be eligible for time credits pursuant to Sections 4018 and 4019.

(g) In the event the prisoner violates the conditions laid down for his or her conduct, custody, education, or employment, the work furlough administrator may order the balance of the prisoner's sentence to be spent in actual confinement.

(h) Willful failure of the prisoner to return to the place of confinement not later than the expiration of any period during which he or she is authorized to be away from the place of confinement pursuant to this section is punishable as provided in Section 4532.

(i) As used in this section, "education" includes vocational and educational training and counseling; and psychological, drug abuse,

alcoholic and other rehabilitative counseling; "educator" includes a person or institution providing such training or counseling; and "employment" includes care of children, including the daytime care of children of the prisoner.

(j) This section shall be known and may be cited as the "Cobey Work Furlough Law."

SEC. 2. Section 6031.1 of the Penal Code is amended to read:

6031.1. Inspections of local detention facilities shall be made biennially. Inspections of privately operated work furlough facilities and programs shall be made biennially unless the work furlough administrator requests an earlier inspection. Inspections shall include, but not be limited to, the following:

(a) Health and safety inspections conducted pursuant to Section 459 of the Health and Safety Code.

(b) Fire suppression preplanning inspections by the local fire department.

(c) Security, rehabilitation programs, recreation, treatment of persons confined in the facilities, and personnel training by the staff of the Board of Corrections.

Reports of each facility's inspection shall be furnished to the official in charge of the local detention facility or, in the case of a privately operated facility, the work furlough administrator, the local governing body, the grand jury, and the presiding or sole judge of the superior court in the county where the facility is located. These reports shall set forth the areas wherein the facility has complied and has failed to comply with the minimum standards established pursuant to Section 6030.

CHAPTER 1055

An act to add Sections 61765.13 and 61767 to the Government Code, and to amend Sections 2, 2.5, 2.6, 7, 11, 13, and 14 of, to amend and renumber Sections 26 of, to add Sections 26, 26.1, 26.2, 26.3, 26.4, 26.5, 26.6, 26.7, 26.8, 26.9, 26.10, 26.11, 26.12, 26.13, 26.14, and 26.15 to, and to repeal Section 17.4 of, the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), relating to districts.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 61765.13 is added to the Government Code, to read:

61765.13. Notwithstanding Section 61765, in any community services district in San Bernardino County, the water standby or availability charge shall not exceed thirty dollars ($30) per year for each acre of land on which the charge is levied or thirty dollars ($30)

per year for a parcel less than one acre. This section does not affect the ability of a district to fix, levy, or collect standby or availability charges pursuant to Chapter 12.4 (commencing with Section 54984) of Part 1 of Division 2 of Title 5, as added by Assembly Bill No. 499 of the 1987–88 Regular Session of the Legislature, if that bill is enacted and becomes effective.

This section, applicable only to San Bernardino County, is necessary because of the unique and special water management and financing problems in the area included within the county.

SEC. 2. Section 61767 is added to the Government Code, to read:

61767. Notwithstanding any other provision of law, any district within San Bernardino County may fix, levy, and collect a sewage and waste service standby or availability charge in any of the alternate methods and in the same manner and under the same terms and conditions as are provided for a water standby or availability charge in this chapter.

This section, applicable only to San Bernardino County, is necessary because of the unique and special water and community services management and financing problems in the area included within the county.

SEC. 3. Section 2 of the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939) is amended to read:

Sec. 2. 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 flood waters thereof flow into the district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining, and causing to percolate into the soil within the district, or without the district, the waters, or to save or conserve in any manner all or any of the waters and protect from flood or storm waters, the watercourses, watersheds, public highways, life, and property in the district, and to prevent waste of water or diminution of the water supply in, or exportation of water from the district, and to obtain, retain, and reclaim drainage, storm, flood, and other waters for beneficial use in the district.

San Bernardino County Flood Control District is hereby declared to be a body corporate and politic and has all of the following powers:

1. To have perpetual succession.

2. To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

3. To adopt a seal and alter it at pleasure.

4. To take by grant, purchase, gift, devise, or lease, or otherwise, and to hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary or convenient to the full exercise of its powers.

5. To acquire, by purchase, lease, construction, or otherwise, or contract to acquire, lands, rights-of-way, easements, privileges, and property of every kind, whether real or personal, and to construct, maintain, 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 to complete, extend, add to, repair, or otherwise improve any works or improvements or property acquired by it as authorized by this act.

6. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water and water rights for any useful purpose to the district; to commence, maintain, intervene in, and compromise, in the name of the district, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within the district used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend, and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in, the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from the district; to prevent contamination, pollution, or otherwise rendering unfit for beneficial use the surface or subsurface water used in the district, and to commence, maintain, and defend actions and proceedings to prevent any interference with the waters as may endanger or damage the inhabitants, lands, or use of water in the district; provided, however, that the district may not intervene or take part in, or pay the costs or expenses of, actions or controversies between the owner of lands or water rights within the boundaries of the district and which do not involve taking water outside of or away from the district; and provided further, that the district may not transport the waters of the Mojave River to any other zone of said district.

7. To control 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 flood waters thereof, flow into the district, and to conserve those waters for beneficial and useful purposes within the district by spreading, storing, retaining, and causing to percolate into the soil within or without the district, or to save or conserve in any manner all or any of those waters and protect from damage from those flood or storm waters the watercourses, watersheds, public highways, life, and property in the district.

8. To exercise the right of eminent domain, either within or without the district, to take any property necessary to carry out any of the objects or purposes of this act. Nothing in this act authorizes the district or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal, or ditch from its channel to

the detriment of any person or persons having any interest in the river, creek, stream, irrigation system, canal, or ditch, or the waters thereof or therein, unless previous compensation is first ascertained and paid therefor, under the laws of this state authorizing the taking of private property for public uses.

9. 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, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair, and improvement of those works, whether in this or in other states, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to this end, and for those purposes and uses, to acquire and hold the stock of corporations, domestic or foreign, owning water or water rights, canals, waterworks, powerplants, franchises, concessions, or rights; 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 San Bernardino County Flood Control District; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch, or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or the right to store water in any reservoir of the district, or to carry the water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district, public or private corporation, association, firm, or individual, or any number of them for the transfer or delivery to any district, corporation, association, firm, or individual of any water right or water pumped, stored, appropriated, or otherwise acquired or secured for the use of the San Bernardino County Flood Control District, or for the purpose of exchanging the water or water right for other water, water right, or water supply to be delivered to the district by the other party to the agreement; to cooperate with 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 or private corporation, in the construction of any work for the controlling of flood or storm waters of the district, or for the protection of life or property therein, or for the purpose of conserving those waters for beneficial use within the district, 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.

10. To carry on technical and other investigations of all kinds, make measurements, collect data, and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods, and use of water, both within and without the district, and for this purpose the district has the right of access through its authorized representative to all properties within the district.

11. To incur indebtedness, and to issue bonds in the manner provided in this act.

12. To cause taxes and 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 provided in this act.

13. 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.

SEC. 4. Section 2.5 of the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939) is amended to read:

Sec. 2.5. In addition to the powers specified in Section 2, the district has all of the following powers:

(1) To borrow money to finance any flood control or conservation project of any zone of the district. Any loan shall not exceed 2 percent of the total assessed value of the zone and shall be repaid in installments over a period of not to exceed 20 years and shall constitute a charge against the funds of the zone in which the construction occurs. Pursuant to the power granted in this section, the board of supervisors may borrow money from the United States of America, or any agency or department thereof, or from the State of California or any agency or department thereof, or from any bank or banking institution authorized to transact business within the State of California or from any private corporation organized under the laws of the State of California and authorized by its articles of incorporation to lend money to public agencies for construction of public works. The power to borrow money authorized by this section shall be exercised only when both of the following actions have been taken:

(a) The board of supervisors has declared the existence of an emergency and ordered the holding of a special election not less than 30 days from the date of the resolution declaring the existence of an emergency.

(b) The proposition of borrowing money has been ratified and authorized by a majority of the votes cast at a special election called for the purpose. A special election may be consolidated with a primary or general election. Interest on any loan authorized shall not exceed a rate in excess of the rate permitted under Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code. A loan made pursuant to this act shall be evidenced by written contract signed by the chairperson of the board specifying the particular flood control work or projects

for which the contracts shall be let. If a surplus remains after completion of the work, the surplus shall be applied to the payment of the principal and interest due under the contract. The board of supervisors shall annually levy a tax or assessment upon the taxable property of the zone or zones within which the work is performed, sufficient to pay the installments and interest on the loan as the principal and interest become due and payable in accordance with the terms of the contract; provided, however, that the tax or assessment levy for the payment of principal and interest on any loan shall not, together with all other charges and obligations for construction, maintenance, operation, and improvements within the zone, exceed the limitations fixed by Section 7 of this act.

(2) To incur indebtedness for the purposes of the district or of any zone thereof.

(3) To issue bonds in the manner provided in this act.

SEC. 5. Section 2.6 of the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939) is amended to read:

Sec. 2.6. The district may borrow money and incur indebtedness pursuant to this section to meet the short-term needs of any zone by action of the board of supervisors and without the necessity of calling and holding an election in the district.

The indebtedness may be incurred solely for the purpose of providing for a cash flow to handle temporary funding for local interest obligations for federal flood control projects or to provide a cash flow for other zone operations prior to receipt of annual tax revenues or other revenues.

Any negotiable promissory notes shall be issued after the adoption, by a four-fifths vote of all the members of the board, of a resolution setting forth the form of the notes, the maturity date or dates thereof, and the manner of execution thereof.

Any negotiable promissory notes shall bear interest at a rate not exceeding the rate permitted under Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code. The notes shall be general obligations of the zone payable from revenues and taxes, unless paid from other available funds of the zone, but in no event to exceed the maximum tax limitations as provided for in this act, in the same manner as bonds of the zone; and provided further, that the maturity shall not be later than five years from the date thereof and that the total aggregate amount of the notes outstanding at any one time for all zones within the district shall not exceed the sum of eight million dollars ($8,000,000).

SEC. 6. Section 7 of the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939) is amended to read:

Sec. 7. The board of supervisors of the district shall have power, in any year:

1. To levy and collect a tax or assessment upon all taxable property in the district to pay the costs and expenses of the San Bernardino County Flood Control District and to carry out any of the objects or

purposes of this act of common benefit to the district as a whole, and

2. To levy and collect a tax or assessment upon all taxable property in each or any of the zones, according to the benefits derived or to be derived by the respective zones, to pay the costs and expenses of carrying out any of the objects or purposes of this act of special benefit to the respective zones, including the constructing, maintaining, operating, extending, repairing, or otherwise improving any or all works or improvements within the respective zones.

The taxes and assessments shall be levied and collected together with, and not separately from, taxes for county purposes, and the revenues derived from the taxes and assessments shall be paid into the county treasury to the credit of the district, and the board of supervisors shall control and order the expenditure thereof for those purposes; provided, however, that no revenues, or portions thereof, derived in any of the several zones from the taxes and assessments levied under subdivision 2 of this section shall be expended for constructing, maintaining, operating, extending, repairing, or otherwise improving any works or improvements not of special benefit to the respective zones; and provided further, however, that the aggregate taxes and assessments levied under this act for any one fiscal year shall not exceed thirty cents ($0.30) on each one hundred dollars ($100) of the assessed valuation of the taxable property in the zones exclusive of any tax levied to meet the bonded indebtedness of the zones and the interest thereon.

SEC. 7. Section 11 of the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939) is amended to read:

Sec. 11. After the adoption of the report as provided in Section 5.5, the board of supervisors may, by resolution, call an election in any zone to submit the proposition of incurring bonded indebtedness to the qualified voters of that zone. The resolution shall set forth the purpose of incurring the proposed bonded indebtedness, the principal amount of the indebtedness, the maximum rate of interest to be paid on the indebtedness which shall not exceed the rate permitted under Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, the date on which the election shall be held, and the manner of holding the election and of voting for or against the incurring of the indebtedness. The election may be held separately or may be consolidated or held concurrently with any other election authorized by law at which the qualified voters of the zone are entitled to vote. Except as otherwise provided in this section or in the resolution, the election shall be held as near as practicable in conformity with the general election laws of the state.

The resolution calling the election shall be published twice in a newspaper of general circulation published in the zone, the first publication to be not less than 10 days before the election; if there is no such newspaper, publication shall be made in a newspaper of general circulation published in the county. No other notice of the

election need be given.

SEC. 8. Section 13 of the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939) is amended to read:

Sec. 13. The board of supervisors shall prescribe the form of the bonds to be issued by the district and of the interest coupons to be attached thereto. The board shall fix the date of the bonds and may, in its discretion, divide the aggregate principal amount of any authorized issue into two or more series and fix different dates for each separate series. If any authorized issue is divided into two or more series, the bonds of each series may be made payable at such time or times as may be fixed by the board, separate and distinct from the time or times of payment of bonds of any other series of the same issue; provided, that no bond shall run more than 40 years from its date and that the earliest maturity of each issue or series, as the case may be, shall not be more than two years from the date of the bonds of the issue or series, and that beginning with the date of the earliest maturity of each issue or series not less than $\frac{1}{40}$th of the indebtedness of such issue or series, as the case may be, shall be paid every year. The board of supervisors may determine in the resolution authorizing the issuance of the bonds that the principal amount of the bonds maturing each year shall be other than an amount equal to an equal annual proportion of the aggregate principal of the bonds, and it may determine that the amount of the principal maturing in each year plus the amount of interest payable in that year shall as nearly as possible be an aggregate amount that is equal each year, except for the principal and interest due on the first series of the bonds which shall be adjusted to reflect the amount of interest covered from the date when the bonds bear interest to the date when the first interest is payable on the bonds, or it may make other determination as to the amount of the aggregate principal of the bonds which shall mature each year as it shall choose.

The bonds shall be issued in the denominations as the board of supervisors may determine, and shall be payable on the date and at the place or places stated in the bonds and with interest at the rate specified in the bonds, payable semiannually, except that interest for the first year may be made payable at the end of that year. The bonds shall be signed by the chairperson of the board of supervisors (or another member of the board of supervisors as the board of supervisors shall, by resolution, designate) and countersigned by the auditor of the county, and the seal of the district shall be affixed thereto. The coupons of the bonds shall be numbered consecutively and signed by the auditor of the county. The bonds may be authenticated by a paying agent selected by the board of supervisors, and the signature on all coupons and one signature on the bonds may be by printed, lithographed, or engraved facsimile signature. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be that officer before the delivery of the bonds to the purchaser, the signature shall nevertheless be valid for all purposes as if that person had remained in office until delivery of the bonds.

The board of supervisors may provide that all, or any part, of the bonds issued may be called and redeemed prior to maturity, at the option of the board, upon payment of the premiums, if any, as the board, in the resolution providing for the issuance thereof, may determine. If any bond is redeemable prior to its maturity, a statement substantially to that effect shall be contained in the bond.

SEC. 9. Section 14 of the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939) is amended to read:

Sec. 14. The bonds may be issued and sold as the board of supervisors determines, but for not less than 95 percent of par and accrued interest. Before selling the bonds, or any part thereof, the board shall give notice inviting sealed bids in the manner as the board may prescribe. If satisfactory bids are received, the bonds shall be sold 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 and either readvertise or sell the bonds at private sale. The proceeds of the sale shall be placed in the treasury of the County of San Bernardino to the credit of the district. All premiums and accrued interest received shall be placed in the fund to be used for the payment of principal of, and interest on, the bonds. The remainder of the proceeds of the bonds shall be placed to the credit of the construction fund of the district and, except as otherwise provided in Section 20.5, shall be applied exclusively to the purposes recited in the resolution calling the election. When those purposes have been accomplished, any moneys remaining in the construction fund shall be transferred to the fund to be used for the payment of principal of, and interest on, the bonds. When those purposes have been accomplished and all principal of, and interest on, the bonds have been paid, any balance of money then remaining shall be transferred to that fund of the district established for the purpose of containing taxes collected for the special benefit of the zone pursuant to Section 7.

SEC. 10. Section 17.4 of the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939) is repealed.

SEC. 11. Section 26 of the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939) is amended and renumbered to read:

Sec. 27.5. This act, and every part thereof, shall be liberally construed to promote the objects thereof, and to carry out its intents and purposes.

SEC. 12. Section 26 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26. The board of supervisors may determine that it may be necessary to sell bonds of the district to finance needed flood control improvements for the protection and benefit of portions of the district which the board determines cannot be financed from annual revenues from taxes or assessments, or both, over a period of years without selling bonds. The board may also determine that it may be

necessary to sell bonds of the district to finance the local share of the cost of any flood control improvements or projects undertaken by the federal government or the state, or both. The board shall make these determinations by the adopting of a resolution indicating its intention to finance the improvements through the issuance of bonds, generally describing the improvements to be financed with the proceeds of the bonds and referring the improvements to an engineer selected by the board and therein named for the preparation and filing with the board of a report with regard to the proposed improvements.

The portions of the district which will benefit from the sale of the bonds and the flood control improvements to be financed shall be designated in the resolution of the board making those determinations as the area of benefit for the specified project, or by some similar designation.

The report shall contain, among other things, all of the following:

(a) A general description of the improvements.

(b) Estimates of the cost of the improvements, the cost of land, rights-of-way, and easements, incidental expenses in connection with the improvements, and expenses in connection with the issuance of the bonds, and if part of the cost of the improvements will be paid from contributions from the federal government or the state, or both, an estimate of the expected total amount of those contributions.

(c) A map which shows the location of the proposed improvements and lands, rights-of-way, easements, and property to be taken, acquired, or injured in carrying out the construction of the improvements, and any other information in regard to those matters as may be deemed useful. However, improvements, lands, rights-of-way, easements, and property which will be located outside the district or outside the area of benefit need not be shown on the map.

(d) A map or maps showing the location of the lots and parcels of property in the area of benefit which will derive special benefit from the proposed improvements and which are proposed to be assessed for the cost thereof.

(e) A listing by county assessor's parcel numbers of the lots and parcels of property within the area of benefit which will derive special benefit from the improvements and which are proposed to be assessed and pay annual assessments for the payment of the principal of, and interest on, the bonds, and the estimated maximum amount of the annual assessment to be levied on each lot or parcel.

(f) A general analysis of the engineer's determination as to how the lots and parcels proposed to be assessed in the area of benefit, and each proposed zone of benefit therein, will derive special benefit from the proposed improvements.

The engineer may propose in the report that parcels of property in the area of benefit which benefit similarly, but differently from other parcels from the improvements, be included in different zones

of benefit which shall be identified by boundary lines on the map or maps specified in subdivision (d). If the engineer proposes in the report the establishment of different zones of benefit, the listing referred to in subdivision (e) shall also identify the zone of benefit in which each lot or parcel is proposed to be included.

SEC. 13. Section 26.1 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26.1. If the improvements are proposed to provide protection against flooding in a floodway or flood plain designated on the general plan of the County of San Bernardino or any city therein or a flood plain area or flood-risk zone established by the Secretary of Housing and Urban Development of the United States pursuant to Section 4101 et seq. of Title 42 of the United States Code, the fact that a lot or parcel of property is located within that floodway or flood plain or flood-risk area shall be conclusive evidence that it will derive special benefit from the improvements. Assessments based on special benefit may be levied on lots and parcels of property included in an area of benefit or in zones of benefit therein on the basis of proportionate stormwater runoff.

Proportionate stormwater runoff may be used as a measure of benefit on an undeveloped parcel of land pursuant to this section only if, and to the extent that, it is found that it will benefit from the service.

For purposes of this section, an "undeveloped parcel of land" means a parcel of rural land in its undeveloped natural state, although the land may be grazed, or otherwise undisturbed, in a manner consistent with the normally accepted grazing land management practices for that geographic area. An "undeveloped parcel of land" also includes wetlands and marshlands if undisturbed and subject to periodic inundation. For purposes of this section, rural land is which is outside of an urbanized area, as designated by the most recent decennial census of the United States Bureau of the Census.

SEC. 14. Section 26.2 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26.2. (a) When the report of the engineer is filed with the board of supervisors, the board may, at a regular or special meeting, approve the report and schedule a hearing thereon. The hearing shall be scheduled not earlier than 30 days and not later than 90 days following approval of the report. Notice of the hearing shall be published pursuant to Section 6066 of the Government Code, and the first publication shall occur not later than 20 days before the date of the hearing. The notice to be published shall do all of the following:

(1) Be entitled "Notice of Flood Control Improvements."

(2) Include the time and place of the hearing on the proposed improvements and on the proposed bonds and annual assessments.

(3) Generally describe the proposed improvements and the proposed area of benefit and refer to the report of the engineer for further particulars.

(4) State that the board of supervisors is considering issuing bonds to finance the cost of the proposed improvements, or the local share thereof, and the amount of the bonds which would be issued.

(5) State that the board of supervisors is considering levying annual assessments on lots and parcels of property within the area of benefit to pay the principal of, and interest on, the bonds.

(6) Contain the name and telephone number of an officer or employee of the district to answer inquiries regarding the protest proceedings.

(b) A notice of the time and place of the hearing shall also be mailed, postage prepaid, to all persons owning real property proposed to be assessed as their names and addresses appear on the last equalized assessment roll for county taxes. The notices shall be mailed not later than 20 days before the date of the hearing. The notices to be mailed shall be entitled "Notice of Flood Control Improvements" and shall contain all of the following:

(1) A statement of the time, place, and purpose of the hearing on the improvements and the proposed annual assessments.

(2) A statement of the total estimated cost of the proposed improvements.

(3) A statement that the board of supervisors proposes to issue and sell bonds to finance the cost of the proposed improvements, or the local share thereof, and to levy annual assessments on lots and parcels of property within the area of benefit which will derive special benefit therefrom to pay the principal of, and interest on, the bonds.

(4) The estimated maximum amount of the annual assessment to be levied on the particular parcel of property to which the notice relates, and a statement that the annual assessment to be levied on the parcel may not exceed 110 percent of that estimated maximum amount.

(5) A statement that any owner of a lot or parcel of property proposed to be assessed for the cost of the improvements or the payment of the principal of, and interest on, the bonds may file a written protest with the clerk.

(6) The name and telephone number of an officer or employee of the district designated by the board of supervisors to answer inquiries regarding the protest proceedings.

(c) If the engineer's report proposes the designation of two or more zones of benefit within the area of benefit wherein parcels will be assessed different amounts of annual assessments, the notice shall also advise each owner of this and of the zone in which his or her lot or parcel will be located.

SEC. 15. Section 26.3 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26.3. Any owner of a lot or parcel of property proposed to be assessed annual assessments for the payment of the principal of, and interest on, the bonds may protest the proposed improvements, the extent of the area of benefit or any proposed zone of benefit, or the proposed maximum annual assessment against his or her lot or parcel

by filing a written protest with the clerk at or before the time set for the hearing.

Each protest shall contain a description of the lot or parcel in which each signer thereof has an ownership interest sufficient to identify the lot or parcel and, if the signers are not shown on the last equalized assessment roll as the owners of the lot or parcel, the protest shall contain or be accompanied by written evidence that the signers are the owners of the property.

The clerk shall endorse on each protest the date of its receipt and, at the time set for the hearing, shall present to the board of supervisors all protests filed with the clerk.

SEC. 16. Section 26.4 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26.4. At the time of the hearing, the engineer's report shall be summarized, and the board of supervisors shall grant all persons who are present an opportunity to comment upon, object to, or present evidence with regard to, the proposed improvements, the proposed area of benefit and zones of benefit, the issuance and sale of the bonds, the proposed estimated maximum amount of annual assessment against any lot or parcel of property, or any other matter relating thereto.

At the conclusion of the hearing, the board of supervisors may confirm the report of the engineer or direct its modification in any respect, and thereafter confirm the report as modified. The board may change the boundaries of the area of benefit or any zone of benefit identified in the report to exclude lots and parcels of property identified which it determines will not derive special benefit from the proposed improvements, but may not change the boundaries of the area of benefit or any zone of benefit therein to include lots and parcels which are not listed in the report.

The hearing may be continued from time to time, but not to exceed a total of 180 days.

SEC. 17. Section 26.5 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26.5. If the board of supervisors finds that written protests filed at or before the time of the hearing are signed by the owners of more than 25 percent of the area of land in the area of benefit or in any proposed zone of benefit therein, and protests are not withdrawn at the time of the hearing so as to reduce the percentage of protest for all proposed zones of benefit below that percentage, the board of supervisors shall abandon the proceedings.

SEC. 18. Section 26.6 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26.6. If the board of supervisors abandons the proceedings, it shall not initiate similar proceedings within a period of 180 days from the date of adoption of the resolution ordering abandonment of the proceedings.

SEC. 19. Section 26.7 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26.7. If, at the conclusion of the hearing, the board of supervisors determines that protests received for the area of benefit and for each of the proposed zones of benefit therein are below the percentage set forth in Section 26.5, the board may adopt a resolution confirming the engineer's report, and, ordering the improvements, or payment of the local share of the cost thereof, if the improvements are to be undertaken by the federal government or the state, or both, and the issuance of the bonds. The board shall also establish in this resolution the boundaries of the area of benefit and all zones of benefit therein by reference to the map or maps contained in the confirmed engineer's report.

SEC. 20. Section 26.8 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26.8. The board of supervisors may authorize the issuance of bonds on the basis of competitive bids or negotiated sale. The board of supervisors shall establish a process of selecting bond counsel, including at least two proposing firms. If the bonds are to be sold on the basis of a negotiated sale, the board of supervisors shall establish a process for selecting underwriters, including at least five proposing underwriter firms, unless the board finds, four-fifths of its members concurring, that fewer than five underwriting firms are willing to submit proposals. If competitive bids are to be received, notice of the time and place of the receipt of bids shall be published in a financial journal of general circulation in the state as provided in Section 6066 of the Government Code. The bonds shall be issued and sold as provided in and be subject to Sections 13 and 14.

SEC. 21. Section 26.9 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26.9. After the authorization and sale of bonds pursuant to Sections 26 to 26.8, inclusive, the board of supervisors shall levy an assessment each year upon the lots and parcels of property identified and listed in the engineer's report based upon the special benefit to be derived thereby from the improvements as specified therein in a total amount sufficient to pay interest on the bonds for that year and that portion of the principal thereof as is to become due before the time for making the next general tax levy. The board may also include in the total amount of the assessment levied in any year the estimated amount of the district's cost of levying and collecting the assessments, the cost of registration, transfer, and payment of the bonds, the expected amount of delinquency in payment of assessments, and the amount, if any, needed to replenish the reserve fund for the bonds as a result of past delinquencies in payment of assessments. However, the amount of the annual assessment on any lot or parcel in any year shall not exceed 110 percent of the estimated amount of the maximum annual assessment set forth in the engineer's report for the lot or parcel. The annual assessments shall be levied, collected, and become delinquent at the same time and in the same manner and have the same lien priority and bear the same penalties and interest after delinquency as the general tax levy for

county purposes.

When collected, the assessments collected shall be paid into the county treasury of the County of San Bernardino to the credit of the district, and be used for the payment of the principal of, and interest on, the bonds, the replenishment of the reserve fund for the bonds, and the district's expenses incurred in collecting the assessments, and for no other purpose. The principal of, and interest on, the bonds shall be paid by the county treasurer of the county in the manner provided by law for the payment of principal of, and interest on, bonds of the county, except that the board of supervisors may determine, in the resolution authorizing the issuance of the bonds, that the principal and interest shall be paid by a paying agent, other than the county treasurer, named therein.

SEC. 22. Section 26.10 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26.10. The board of supervisors may include in the aggregate principal amount of the bonds an amount for a reserve fund for the payment of the principal of, and interest on, the bonds if, as a result of delinquencies in the payment of annual assessments levied on benefiting lots and parcels, there is a deficiency in the amount needed for the payment of principal and interest. The amount to be included for the reserve fund shall not exceed 15 percent of the total principal amount of the bonds. The reserve fund and all interest earned thereon shall be used solely for the payment of the principal of, and interest on, the bonds, if there is a deficiency and then only to the extent of the deficiency.

Notwithstanding any other provision of this section, for the purposes of ensuring that the bonds will not become arbitrage bonds as defined in the Internal Revenue Code of 1954 (Title 26 of the United States Code) and regulations adopted thereunder by the Department of the Treasury, and providing for a reduction of the amount of money in the special reserve fund during the term of the bonds, the board of supervisors may, by resolution adopted prior to the issuance of the bonds, provide that money in the reserve fund, including investment income, shall be transferred to the redemption fund for the bonds for advance retirement of the bonds.

The balance remaining in the reserve fund at the time of the levy of the annual assessments for the payment of the principal of, and interest on, the last series of the bonds shall be transferred to the redemption fund and taken into consideration by the board of supervisors in determining the aggregate amount of the annual assessments to be levied for the payment of the principal and interest. In lieu of establishing a reserve fund or in addition thereto, the board of supervisors may, in determining the amount of the assessments to be levied on lots and parcels benefiting from the improvements in any year, include in the assessments a proportionate share of any expected amount of delinquency in payment of assessments, or a proportionate share of the amount needed to replenish the reserve fund as a result of past delinquencies

in the payment of assessments.

Notwithstanding the preceding provisions of this section, if any amendment to the Internal Revenue Code of 1954 or the regulations of the Department of the Treasury thereunder require a different allocation or utilization of the amount of the reserve fund or the earnings thereon than is provided in this section, the board of supervisors shall order that action with regard to the reserve fund or the earnings thereon as is required by that code or regulations to avoid the interest on the bonds becoming taxable.

SEC. 23. Section 26.11 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26.11. Sections 7 to 22, inclusive, and 26 to 26.10, inclusive, provide alternative authorization and proceedings for making improvements, or paying the local share of the cost thereof, and issuing bonds, and may be pursued by the board of supervisors in lieu of any other, similar proceedings which are authorized by this act.

SEC. 24. Section 26.12 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26.12. The validity of any proceedings for the issuance of bonds conducted pursuant to Sections 7 to 22, inclusive, and Sections 26 to 26.10, inclusive, shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the adoption by the board of supervisors of a resolution or resolutions confirming, or modifying and confirming as modified, the engineer's report and authorizing the issuance of bonds. An appeal from a final judgment in the action or proceeding shall be perfected within 30 days after the entry of judgment. Bonds issued pursuant to Sections 7 to 22, inclusive, and Sections 26 to 26.10, inclusive, shall be conclusive evidence of the regularity of all proceedings leading up to the issuance of the bonds.

SEC. 25. Section 26.13 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26.13. An action to determine the validity of bonds issued pursuant to Sections 7 to 22, inclusive, and Sections 26 to 26.10, inclusive, and of the annual assessments to be levied on lots and parcels which will derive special benefit from the improvements to be financed therewith to pay the principal of, and interest on, the bonds, or to determine the validity of assessments levied pursuant to Section 7, may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

SEC. 26. Section 26.14 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26.14. The board of supervisors shall, upon confirming the engineer's report and establishing the boundaries of the area of benefit pursuant to Section 7 or Section 26.7, record with the County Recorder of the County of San Bernardino a notice of the establishment of the area of benefit. The notice shall be captioned "Notice of Establishment of Area of Benefit for the _____ Project of the San Bernardino County Flood Control District," and shall

provide notice of the boundaries of the territory included in the area of benefit by reference to sections, townships, and ranges of the United States Government Survey of public lands, or a map or maps showing the boundaries which may be recorded with the notice. The notice shall further provide notice that all lots and parcels of land in the area of benefit are subject to the annual levy of assessments for the payment of the cost of the construction, maintenance, operation, extension, and repair of any works or improvements or the payment of the principal of, and interest on, bonds of the district sold to finance those improvements, or the local share of the cost thereof, and that the amount of annual assessment for any lot or parcel therein may be obtained from the chief engineer of the district. If the board of supervisors determines to provide notice of the boundaries of the territory included in the area of benefit by reference to the sections, townships, and ranges of the United States Government Survey, it need not specifically identify the boundaries, but shall by that reference generally identify the territory included therein. The notice shall be signed on behalf of the district by the chairperson of the board of supervisors or the chief engineer. The recording of the notice shall impart constructive notice of its contents to purchasers and mortgagees of property in the area of benefit.

SEC. 27. Section 26.15 is added to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 26.15. The Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800) of the Streets and Highways Code) does not apply to assessments levied pursuant to Section 7 or Sections 26 to 26.10, inclusive.

SEC. 28. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 1056

An act to amend Sections 14672.15 and 15819.8 of, and to add Section 15819.21 to, the Government Code, and to amend Section 2048.7 of, and to add Section 1387.1 to, the Penal Code, to amend Sections 2.9 and 4 of Chapter 933 of the Statutes of 1985, and to amend Sections 6.5, 9, 10, and 13 of Chapter 1393 of the Statutes of 1986, relating to crime, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 14672.15 of the Government Code is amended to read:

14672.15. Notwithstanding Section 14670, the Director of General Services, with the consent of the Department of Corrections, upon such terms and conditions as the director deems in the best interests of the state and without any monetary consideration, may let to the City of Chino for a term not to exceed 25 years, for the purposes of developing and maintaining a public park, real property not to exceed 140 acres which belongs to the state and which is retained by the state primarily to provide a peripheral buffer area, or zone, between real property upon which is located the California Institution for Men and adjacent real property. The lease authorized by this section shall be nonassignable and shall be subject to periodic review after the fifth anniversary of the lease. Such review shall be made by the Director of General Services who shall ascertain whether the original purposes of the lease are being carried out. The lease provided for by this section may be renewed upon its expiration for a term not to exceed 20 years.

SEC. 2. Section 15819.8 of the Government Code is amended to read:

15819.8. At least 20 days prior to marketing bonds authorized by this chapter, the Department of Corrections shall notify the chairpersons of the fiscal committees in each house of the Legislature, the Chairpersons of the Assembly Committee on Public Safety and the Senate Judiciary Committee, the Chairperson and the Vice Chairperson of the Joint Legislative Budget Committee, and the Chairperson of the Joint Legislative Committee on Prison Construction and Operation of the general parameters of the proposed sale, including the size and terms of the issue, the anticipated debt service requirements, and any other significant factors affecting the sale. This paragraph does not apply to the marketing of bonds for lease-purchase financing of the California State Prison—Corcoran.

The Department of Corrections shall report to each of these persons on a quarterly basis following the sale of the bonds on the progress of any acquisition or construction financed by the sale and on the then current debt service requirements.

SEC. 3. Section 15819.21 is added to the Government Code, to read:

15819.21. (a) The necessary funding for the construction of the California State Prison-Madera County authorized by Section 6.5 of Chapter 1393 of the Statutes of 1986, as amended by the act in which this section was added, may be obtained through lease-purchase financing arrangements. The provisions of Sections 15819.1 to

15819.13, inclusive, and Section 15819.15 shall apply for that purpose provided that:

(1) "Prison facility" as used in Section 15819.1 includes the California State Prison-Madera County.

(2) Notwithstanding the monetary limitation imposed by Section 15819.3, the total amount of bonds which may be issued pursuant to this section for the California State Prison—Madera County shall not exceed the additional sum of two hundred twenty-five million dollars ($225,000,000).

(b) Notwithstanding Section 13340, funds derived from the lease-purchase financing methods for the California State Prison—Madera County deposited in the State Treasury, are hereby continuously appropriated to the State Public Works Board on behalf of the Department of Corrections for the purpose of acquiring and constructing or refinancing the prison facility so financed.

Funds appropriated by this section shall be available as necessary for site acquisition, site studies and suitability reports, environmental planning, architectural programming, schematics, preliminary plans, working drawings, construction, long-lead and equipment items.

The State Public Works Board may authorize the augmentation of the cost of the construction of the projects set forth in this section pursuant to the board's authority under Section 13332.11.

SEC. 3.5. Section 1387.1 is added to the Penal Code, to read:

1387.1. (a) Where an offense is a violent felony, as defined in Section 667.5 and the prosecution has had two prior dismissals, as defined in Section 1387, the people shall be permitted one additional opportunity to refile charges where either of the prior dismissals under Section 1387 were due solely to excusable neglect. In no case shall the additional refiling of charges provided under this section be permitted where the conduct of the prosecution amounted to bad faith.

(b) As used in this section, "excusable neglect" includes, but is not limited to, error on the part of the court, prosecution, law enforcement agency, or witnesses.

SEC. 4. Section 2048.7 of the Penal Code is amended to read:

2048.7. Notwithstanding other provisions of the law, the Director of Corrections shall have the authority to modify the percentage of the inmate population of the Southern Maximum Security Complex to be employed by the Prison Industry Authority, or to participate in vocational training commensurate with security requirements in relation to the type of inmates housed therein, provided that the percentage of the inmate population to be employed by the Prison Industry Authority or to participate in vocational training shall be no less than 60 percent of the inmates in the general population. Authority is also vested in the director to utilize up to 100 percent of the cells of the facility to house special cases. The director may also choose to double occupy each cell if systemwide overcrowding demands that measure.

The Director of Corrections may implement the provisions of this

section only if the encumbrance of those funds is authorized by the Department of Finance, not sooner than 30 days after notification in writing of the necessity therefor, to the chairman of the committee in each house which considers appropriations and the Chairman of the Joint Legislative Budget Committee.

SEC. 5. Section 2.9 of Chapter 933 of the Statutes of 1985 is amended to read:

Sec. 2.9. It is the intent of the Legislature that, to the extent that available capacity permits, California Institution for Men, East, and California Institution for Men, Minimum, shall be reduced to at least 120% of capacity by 1992.

SEC. 6. Section 4 of Chapter 933 of the Statutes of 1985 is amended to read:

Sec. 4. Notwithstanding any other provision of law:

(a) The Department of Corrections is authorized to increase by 500 level III beds each, the design capacity of:

(1) The Southern Maximum Security Complex at Tehachapi.

(2) The California Correctional Center at Susanville.

(3) The Sierra Conservation Center at Jamestown.

(b) Notwithstanding Section 1 of Chapter 1, Statutes of 1982, or any other provision of law, the full employment in Correctional Industries or participation in vocational training of all inmates shall not be required for the expansion beds authorized in this section. It is the intent of the Legislature, however, that the Department of Corrections shall provide for the appropriate opportunities for employment and participation in vocational training as provided under Section 1 of Chapter 1 of the Statutes of 1982, at the earliest possible opportunity.

(c) Notwithstanding Section 7003 of the Penal Code, approval by the Joint Legislative Prison Committee as specified in Section 7003 of the Penal Code shall not be required for construction of the facilities authorized in this section.

(d) Subdivisions (b) and (c) of this section shall be operative only until July 1, 1989, and, as of that date shall no longer have any force and effect.

SEC. 7. Section 6.5 of Chapter 1393 of the Statutes of 1986 is amended to read:

Sec. 6.5. (a) The Department of Corrections shall perform site suitability studies and prepare an environmental impact report for constructing a women's facility of up to 2,000 beds in Madera County.

(b) The Department of Corrections shall hold public hearings regarding proposed sites.

(c) The Department of Corrections shall submit the summary from the environmental impact report to the Joint Legislative Budget Committee and the Joint Legislative Committee on Prison Construction and Operation as soon as the summary is completed, but no later than October 1, 1987.

(d) The Department of Corrections is authorized to construct a women's facility of up to 2,000 beds in Madera County.

SEC. 8. Section 9 of Chapter 1393 of the Statutes of 1986 is amended to read:

Sec. 9. The Department of Corrections shall perform site suitability studies and prepare an environmental impact report for constructing a correctional facility in Imperial County, and report its findings to the Legislature. The environmental impact report shall identify the proposed size, inmate custody level, and work programs for the proposed project.

SEC. 9. Section 10 of Chapter 1393 of the Statutes of 1986 is amended to read:

Sec. 10. The Department of Corrections shall perform site suitability studies and prepare an environmental impact report for constructing a correctional facility in western Kern County, and report its findings to the Legislature. The environmental impact report shall identify the proposed size, inmate custody level, and work programs for the proposed project.

SEC. 10. Section 13 of Chapter 1393 of the Statutes of 1986 is amended to read:

Sec. 13. The sum of nine million seven hundred two thousand dollars ($9,702,000) is appropriated to the Department of Corrections as follows:

(a) There is hereby appropriated from the 1984 Prison Construction Fund to the Department of Corrections the sum of one million six hundred ninety-three thousand dollars ($1,693,000) for the Northern California Women's Facility in San Joaquin County, to be allocated, as follows:

(1) For purposes, as necessary, of site acquisition, site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long lead and equipment items	$1,500,000
(2) For design and construction costs associated with road widening and curbs and gutters installation	$ 193,000

(b) There is hereby appropriated from the 1984 Prison Construction Fund to the Department of Corrections, the sum of five hundred thousand dollars ($500,000) for site suitability studies and environmental impact report preparation in Madera County.

(c) There is hereby appropriated to the Department of Corrections from the 1986 Prison Construction Fund, the sum of four million dollars ($4,000,000) for construction of a minimum security, work-based facility in Modoc County.

Funds appropriated under this section shall be available for purposes as necessary, of site acquisition, site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings,

construction, long lead and equipment items.

(d) There is hereby appropriated from the 1986 Prison Construction Fund to the Department of the Youth Authority the sum of five hundred thousand dollars ($500,000) for expanded vocational/educational program space.

(e) There is hereby appropriated from the 1986 Prison Construction Fund to the Department of Corrections, the sum of five hundred thousand dollars ($500,000) for site suitability studies and environmental impact report preparation in Imperial County.

(f) There is hereby appropriated from the 1986 Prison Construction Fund to the Department of Corrections, the sum of five hundred thousand dollars ($500,000) for site suitability studies and environmental impact report preparation in western Kern County.

(g) There is hereby appropriated to the Department of Corrections from the 1986 Prison Construction Fund the sum of one million nine thousand dollars ($1,009,000), for costs associated with the County of San Diego Road Improvements Agreement for the relocation of an existing 20-inch waterline owned by the Otay Water District located within the access roads to the Richard J. Donovan Correctional Facility at Rock Mountain.

(h) There is hereby appropriated to the Department of Corrections from the 1986 Prison Construction Fund the sum of one million dollars ($1,000,000) for the purposes specified in Section 6.

SEC. 11. The environmental impact reports prepared pursuant to subdivision (a) of Section 6.5, Section 9, and Section 10 of Chapter 1393 of the Statutes of 1986, as amended, may be used to meet requirements imposed by the California Environmental Quality Act for preparation of an environmental impact report for the projects authorized or designated in those sections if the preparation of the environmental impact report pursuant to those sections has complied with all provisions of the California Environmental Quality Act applicable to those projects.

SEC. 12. Notwithstanding any other provision of law, the Department of General Services is hereby authorized, empowered, and directed to transfer to the City of Avenal, a fee interest in that real property upon which a certain wastewater treatment plant is located, which plant was constructed pursuant to a joint powers agreement between the Department of Corrections and the City of Avenal. The Department of General Services is further authorized, empowered, and directed to transfer any easements which may be necessary to allow the City of Avenal to operate and maintain the treatment plant.

SEC. 13. The sum of one hundred fifty-five million eighty-nine thousand dollars ($155,089,000) is appropriated to the Department of Corrections, as follows:

(a) The sum of one hundred forty-seven million dollars ($147,000,000) is hereby appropriated from the 1988 Prison Construction Bond Fund to the Department of Corrections for the construction of a women's facility of up to 2,000 beds in Madera

County.

Funds appropriated by this subdivision shall be available for purposes, as necessary, of site acquisition, site studies and suitability reports, environmental impact reports, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long lead and equipment items. Funds appropriated by this subdivision shall also be used to repay any loans authorized from the Pooled Money Investment Account or to retire or redeem any outstanding, notes or bonds which have been issued for the planning and construction of this facility pursuant to Section 15819.21 of the Government Code as enacted by this act.

(b) The sum of six million three hundred forty-seven thousand dollars ($6,347,000) is hereby appropriated to the Department of Corrections from the 1986 Prison Construction Fund.

Funds appropriated by this subdivision shall be available for purposes, as necessary, of site studies and suitability reports, environmental studies, master planning, architectural programming, and schematics for new correctional facilities. These funds may also be expended for preliminary plans for a reception center and for a medium or maximum security facility or combination thereof.

The sum of one million seven hundred forty-two thousand dollars ($1,742,000) is hereby appropriated from the 1986 Prison Construction Fund to the Department of the Youth Authority in augmentation, to be allocated as follows:

(1) The sum of six hundred sixty-one thousand dollars ($661,000) for the renovation of the infirmary building at the Preston School of Industry in augmentation of Item 5460-301-7461 of the Budget Act of 1986.

(2) The sum of one million eighty-one thousand dollars ($1,081,000) for construction for the Fred C. Nelles Living Unit and Education facility construction in augmentation of Item 5460-301-746(5) of the Budget Act of 1986.

SEC. 14. 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:

California prisons are severely overcrowded. In order to alleviate that problem at the earliest possible date, this act must take effect immediately.

CHAPTER 1057

An act to amend Section 14090 of the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 14090 of the Welfare and Institutions Code is amended to read:

14090. (a) The commission shall conduct a study to determine the feasibility, costs, and benefits of offering persons eligible for benefits under Title XVIII of the federal Social Security Act and the state's Medi-Cal program multiple options for health benefit coverage negotiated and purchased by the state in lieu of fee-for-service Medi-Cal coverage.

(b) The study shall include, but not be limited to, all of the following elements:

(1) Review of other efforts that have been or are being made to provide supplemental health benefit coverage to the Medicare population.

(2) Determination of costs and services used by the Medicare population.

(3) Analysis of the utilization patterns of the crossover population, including the use of hospitals by governance and peer group categories. For purposes of this paragraph "crossover population" means those persons eligible for federal and state benefits as described in subdivision (a).

(4) Analysis of whether or not the need for various types of health benefit coverage varies if the dually eligible individual has enrolled in a Medicare health maintenance organization or competitive medical plan or has a Medi-Cal share of cost.

(5) Consideration of health benefit coverage options that maximize the choice available to the eligible individuals. These may include, but are not limited to, any of the following, individually or collectively:

(A) Supplemental indemnity health insurance.

(B) Health insurance with a preferred provider benefit.

(C) Health insurance through a health maintenance organization or other organized system of care.

(6) Completion of a marketing analysis to identify organizations offering health benefit coverage and to measure their interest in providing coverage to the dually eligible population, including an evaluation of the most appropriate scope of benefits to cover.

(7) Assessment of whether this method of coverage should be optional or mandatory.

(8) Analysis of the utilization control measures any insurers should include in the management of their insurance plan as assurances to the state as to the fiscal integrity of their potential contractual arrangement with the state.

(9) Determination of the need for reinsurance or stop-loss limits.

(10) Description of the organizational structure which would provide those persons eligible for such coverage with the appropriate state services to assist them in the purchase of and participation in the health coverage programs.

(11) Identification of short- and long-range net savings or costs associated with the coverage arrangements being considered.

(12) Assessment of the service and financial impact any proposed activities would have on disproportionate providers of health care in any area affected by new financing or organizational arrangements.

(13) Analysis of the feasibility of the state providing an arrangement whereby Medicare eligible members of the general public could participate in any program established pursuant to this article.

(c) The commission shall report to the Governor and the Legislature on the results of the study and its determination whether the study is feasible and beneficial to the persons eligible for Medicare and the state Medi-Cal program, no later than October 1, 1987.

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

In order for the appropriate date for the required report to be accurate, it is necessary that this act take effect immediately.

CHAPTER 1058

An act to amend Sections 1797.171 and 1797.172 of, to amend the heading of Article 2 (commencing with Section 1797.120) of Chapter 3 of Division 2.5 of, and to repeal Sections 1797.120 and 1797.174 of, the Health and Safety Code, and to amend Section 409.3 of the Penal Code, relating to emergency medical services.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. The heading of Article 2 (commencing with Section 1797.120) of Chapter 3 of Division 2.5 of the Health and Safety Code is amended to read:

Article 2. Reports

SEC. 2. Section 1797.120 of the Health and Safety Code is repealed.

SEC. 3. Section 1797.171 of the Health and Safety Code is amended to read:

1797.171. The authority shall develop, and after approval of the commission pursuant to Section 1799.50 shall adopt, minimum standards for the training and scope of practice for EMT-II.

SEC. 4. Section 1797.172 of the Health and Safety Code is amended to read:

1797.172. The authority shall develop, and after the approval of the commission pursuant to Section 1799.50, shall adopt, minimum standards for the training and scope of practice for EMT-P.

SEC. 5. Section 1797.174 of the Health and Safety Code is repealed.

SEC. 6. Section 409.3 of the Penal Code, as added by Chapter 257 of the Statutes of 1987, is amended to read:

409.3. Whenever law enforcement officers and emergency medical technicians are at the scene of an accident, management of the scene of the accident shall be vested in the appropriate law enforcement agency, whose representative shall consult with representatives of other response agencies at the scene to ensure that all appropriate resources are properly utilized. However, authority for patient care management at the scene of an accident shall be determined in accordance with Section 1798.6 of the Health and Safety Code.

For purposes of this section, "management of the scene of an accident" means the coordination of operations which occur at the location of an accident.

CHAPTER 1059

An act to amend Section 81802 of, and to add Section 81003 to, the Education Code, relating to community colleges.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 81003 is added to the Education Code, to read:

81003. Subject to Section 66904, a community college may build campus facilities on school, local government, or other public property not owned by the community college, if the community college obtains permission from the owner of the public property to do so.

SEC. 2. Section 81802 of the Education Code is amended to read:

81802. (a) As used in this chapter, "project" means the purpose for which a community college district has applied for assistance under this chapter for one or more institutions under its authority or for districtwide facilities. A project may include the planning, acquisition, and improvement of community college sites; the planning, construction, reconstruction, or remodeling of any permanent structure necessary for use as a classroom, a laboratory, a library, a performing arts facility, a gymnasium, the basic outdoor physical education facilities, the basic food service facilities, or child development centers, pursuant to Section 79120; related facilities necessary for the instruction of students or for administration of the educational program; maintenance or utility facilities essential to the operation of the foregoing facilities; and the initial acquisition of equipment.

(b) A project may also include the reconstruction or remodeling of any facility leased or lease-purchased for educational purposes. The chancellor's office shall require transfer to the community college district of title or any other interest considered sufficient by the district, in and to facilities presently leased or to be leased in the future by the district, to the extent of the funds appropriated for reconstruction or remodeling of leased facilities. When sufficient title or interest has not been transferred, the term of the lease shall be of sufficient duration to completely amortize the reconstruction or remodeling cost. The amortization shall be determined by utilizing current interest rates and normal accounting practices. If the lease is terminated prior to amortizing the reconstruction or remodeling costs the district shall repay the state for any unamortized state costs.

A project consisting of the construction of any facilities listed in subdivision (a) on property that conforms to subdivision (b) of Section 81530 shall be eligible for state funding. For any project that is constructed under this paragraph, the term of the lease shall be of sufficient duration to completely amortize the cost of the project and the governing board of the community college district shall provide in the lease agreement a hold harmless clause satisfactory to the lessor. The amortization shall be determined by utilizing current interest rates and normal accounting practices. If the lease is terminated prior to amortizing the project, the district shall pay the state for any unamortized state costs.

(c) The projects defined by subdivisions (a) and (b) of this section shall not be construed as a commitment by the Legislature as to the type or possible number of projects that may be considered during any fiscal year.

(d) A project shall not include the planning or construction of dormitories, student centers other than cafeterias, stadia, the improvement of sites for student or staff parking, or single-purpose auditoriums.

SEC. 2.5. Section 81802 of the Education Code, as amended by

Section 1 of Senate Bill 449, is amended to read:

81802. (a) As used in this chapter, "project" means the purpose for which a community college district has applied for assistance under this chapter for one or more institutions under its authority or for districtwide facilities. A project may include the planning, acquisition, and improvement of community college sites; the planning, construction, reconstruction, or remodeling of any permanent structure necessary for use as a classroom, a laboratory, a library, a performing arts facility, a gymnasium, the basic outdoor physical education facilities, the basic food service facilities, or child development centers, pursuant to Section 79120; related facilities necessary for the instruction of students or for administration of the educational program; maintenance or utility facilities essential to the operation of the foregoing facilities; and the initial acquisition of equipment. A project may also include the initial furnishing of, and initial acquisition of equipment for, any facility leased or lease-purchased by a community college district as of August 1, 1987, for any educational purpose or purposes.

(b) A project may also include the reconstruction or remodeling of any facility leased or lease-purchased for educational purposes. The chancellor's office shall require transfer to the community college district of title or any other interest considered sufficient by the district, in and to facilities presently leased or to be leased in the future by the district, to the extent of the funds appropriated for reconstruction or remodeling of leased facilities. When sufficient title or interest has not been transferred, the term of the lease shall be of sufficient duration to completely amortize the reconstruction or remodeling cost. Such amortization shall be determined by utilizing current interest rates and normal accounting practices. If the lease is terminated prior to amortizing the reconstruction or remodeling costs the district shall repay the state for any unamortized state costs.

A project consisting of the construction of any facilities listed in subdivision (a) on property that conforms to subdivision (b) of Section 81530 shall be eligible for state funding. For any project that is constructed under this paragraph, the term of the lease shall be of sufficient duration to completely amortize the cost of the project and the governing board of the community college district shall provide in the lease agreement a hold harmless clause satisfactory to the lessor. The amortization shall be determined by utilizing current interest rates and normal accounting practices. If the lease is terminated prior to amortizing the project, the district shall pay the state for any unamortized state costs.

(c) The projects defined by subdivisions (a) and (b) of this section shall not be construed as a commitment by the Legislature as to the type or possible number of projects that may be considered during any fiscal year.

(d) A project shall not include the planning or construction of dormitories, student centers other than cafeterias, stadia, the

improvement of sites for student or staff parking, or single-purpose auditoriums.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 81802 of the Education Code proposed by both this bill and SB 449. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1988, (2) each bill amends Section 81802 of the Education Code, and (3) this bill is enacted after SB 449, in which case Section 81802 of the Education Code, as amended by SB 449, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative.

CHAPTER 1060

An act to add Section 104.11 to, the Streets and Highways Code, relating to transportation.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 104.11 is added to the Streets and Highways Code, to read:

104.11. (a) Upon a finding that the action would not adversely affect the activities of the department, the department may lease, in whole or in part, property owned by it in the block bounded by First Street, Main Street, Second Street, and Los Angeles Street in the City of Los Angeles to public agencies or private entities for any term not to exceed 99 years. Each lease shall be subject to reservations, restrictions, and conditions as the department deems appropriate. Prior to entering into a lease, the department shall determine that the proposed lease is not in conflict with local zoning ordinances. The lease may provide for joint use of the property by the department. Each lease shall be subject to prior approval by the commission.

(b) Revenues from leases shall be deposited in the State Highway Account.

(c) The department shall act as agent for the payment of its tenant's possessory interest tax in accordance with the procedures of Section 104.13.

CHAPTER 1061

An act to amend Section 8880.5 of the Government Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 8880.5 of the Government Code is amended to read:

8880.5. Allocations for education:

The California State Lottery Education Fund is created within the State Treasury, and is continuously appropriated for carrying out the purposes of this chapter. The Controller shall draw warrants on this fund and distribute them quarterly in the following manner, provided that the payments specified in subdivisions (a) to (h), inclusive, shall be equal per capita amounts:

(a) Payments shall be made directly to public school districts, including county superintendents of schools, serving kindergarten and grades 1 to 12, inclusive, or any part thereof, on the basis of an equal amount for each unit of average daily attendance, as defined by law.

(b) Payments shall also be made directly to public school districts serving community colleges, on the basis of an equal amount for each unit of average daily attendance, as defined by law.

(c) Payments shall also be made directly to the Board of Trustees of the California State University on the basis of an amount for each unit of equivalent full-time enrollment. Funds received by the trustees shall be deposited in and expended from the California State University Lottery Education Fund which is hereby created.

(d) Payments shall also be made directly to the Regents of the University of California on the basis of an amount for each unit of equivalent full-time enrollment.

(e) Payments shall also be made directly to the Board of Directors of the Hastings College of the Law on the basis of an amount for each unit of equivalent full-time enrollment.

(f) Payments shall also be made directly to the California Maritime Academy Board of Governors on the basis of an amount for each unit of equivalent full-time enrollment.

(g) Payments shall also be made directly to the Department of the Youth Authority for educational programs serving kindergarten and grades 1 to 12, inclusive, or any part thereof, on the basis of an equal amount for each unit of average daily attendance, as defined by law.

(h) Payments shall also be made directly to the two California Schools for the Deaf, the California School for the Blind, and the three Diagnostic Schools for Neurologically Handicapped Children, on the basis of an amount for each unit of equivalent full-time

enrollment.

(i) No Budget Act or other statutory provision shall direct that payments for public education made pursuant to this chapter be used for purposes and programs (including workload adjustments and maintenance of the level of service) authorized by Chapters 498, 565, and 1302 of the Statutes of 1983, Chapter 97 or 258 of the Statutes of 1984, or Chapter 1 of the Statutes of 1984, Second Extraordinary Session.

(j) School districts and other agencies receiving funds distributed pursuant to this chapter may at their option utilize funds allocated by this chapter to provide additional funds for those purposes and programs prescribed by subdivision (i) for the purpose of enrichment or expansion.

(k) As a condition of receiving any moneys pursuant to subdivision (a) or (b), each district and county superintendent of schools shall establish a separate account for the receipt and expenditure of those moneys, which account shall be clearly identified as a lottery education account.

It is the intent of this chapter that all funds allocated from the California State Lottery Education Fund shall be used exclusively for the education of pupils and students and no funds shall be spent for acquisition of real property, construction of facilities, financing of research, or any other noninstructional purpose.

SEC. 2. Section 1 of this act shall not become operative until July 1, 1988.

SEC. 3. The Legislature finds and declares that Section 1 of this act, which amends Section 8880.5 of the Government Code, furthers the purposes of the California State Lottery Act of 1984.

CHAPTER 1062

An act to add Section 14672.25 to the Government Code, relating to state property, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987]

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

SECTION 1. Section 14672.25 is added to the Government Code, to read:

14672.25. Notwithstanding Section 14670, the director, with the consent of the State Department of Developmental Services, may lease to the City of San Jose for the purpose of constructing and maintaining a fire station for a period not to exceed 75 years, real property of approximately two acres located on the grounds of Agnew State Hospital.

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

In order for the construction of the fire station to be commenced and completed as soon as possible for the safety of the community it is necessary that this act take effect immediately.

CHAPTER 1063

An act to add Section 1203.1i to the Penal Code, relating to crimes.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 1203.1i is added to the Penal Code, to read:

1203.1i. (a) In any case in which a defendant is convicted of a violation of any building standards adopted by a local entity by ordinance or resolution, including, but not limited to, local health, fire, building, or safety ordinances or resolutions, or any other ordinance or resolution relating to the health and safety of occupants of buildings, by maintaining a substandard building, as specified in Section 17920.3 of the Health and Safety Code, the court, or judge thereof, in making an order granting probation, in addition to any other orders, may order the defendant placed under house confinement, or may order the defendant to serve both a term of imprisonment in the county jail and to be placed under house confinement.

This section only applies to violations involving a dwelling unit occupied by persons specified in subdivision (a) of Section 1940 of the Civil Code who are not excluded by subdivision (b) of that section.

(b) If the court orders a defendant to serve all or part of his or her sentence under house confinement, pursuant to subdivision (a), he or she may also be ordered to pay the cost of having a police officer or guard stand guard outside the area in which the defendant has been confined under house confinement if it has been determined that the defendant is able to pay these costs.

(c) As used in this section, "house confinement" means confinement to a residence or location designated by the court and specified in the probation order.

CHAPTER 1064

An act to add Sections 7153.5, 9354.5, 30480, 40187, 41143.4, and 44187 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 7153.5 is added to the Revenue and Taxation Code, to read:

7153.5. Notwithstanding any other provision of this part, any violation of this part by any person with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars ($25,000) or more in any 12-consecutive-month period. The determination shall be approved by the principal tax auditor or that person's supervisor. Each offense shall be punished by a fine of not less than five thousand dollars ($5,000) and not more than twenty thousand dollars ($20,000), or imprisonment for 16 months, two years, or three years, or both the fine and imprisonment in the discretion of the court.

SEC. 2. Section 9354.5 is added to the Revenue and Taxation Code, to read:

9354.5. Notwithstanding any other provision of this part, any violation of this part by any person with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars ($25,000) or more in any 12-consecutive-month period. The determination shall be approved by the administrator of the excise taxes or that person's supervisor. Each offense shall be punished by a fine of not less than five thousand dollars ($5,000) and not more than twenty thousand dollars ($20,000), or imprisonment for 16 months, two years, or three years, or both the fine and imprisonment in the discretion of the court.

SEC. 3. Section 30480 is added to the Revenue and Taxation Code, to read:

30480. Notwithstanding any other provision of this part, any violation of this part by any person with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars ($25,000) or more in any 12-consecutive-month period. The determination shall be approved by the administrator of the excise taxes or that person's supervisor. Each offense shall be punished by a fine of not less than five thousand dollars ($5,000) and not more than twenty thousand dollars ($20,000), or imprisonment for 16 months, two years, or three years, or both the fine and imprisonment in the discretion of the court.

SEC. 4. Section 40187 is added to the Revenue and Taxation Code, to read:

40187. Notwithstanding any other provision of this part, any violation of this part by any person with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars ($25,000) or more in any 12-consecutive-month period. The determination shall be approved by the administrator of the excise taxes or that person's supervisor. Each offense shall be punished by a fine of not less than five thousand dollars ($5,000) and not more than twenty thousand dollars ($20,000), or imprisonment for 16 months, two years, or three years, or both the fine and imprisonment in the discretion of the court.

SEC. 5. Section 41143.4 is added to the Revenue and Taxation Code, to read:

41143.4. Notwithstanding any other provision of this part, any violation of this part by any person with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars ($25,000) or more in any 12-consecutive-month period. The determination shall be approved by the administrator of the excise taxes or that person's supervisor. Each offense shall be punished by a fine of not less than five thousand dollars ($5,000) and not more than twenty thousand dollars ($20,000), or imprisonment for 16 months, two years, or three years, or both the fine and imprisonment in the discretion of the court.

SEC. 6. Section 44187 is added to the Revenue and Taxation Code, to read:

44187. Notwithstanding any other provision of this part, any violation of this part by any person with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars ($25,000) or more in any 12-consecutive-month period. The determination shall be approved by the administrator of the excise taxes or that person's supervisor. Each offense shall be punished by a fine of not less than five thousand dollars ($5,000) and not more than twenty thousand dollars ($20,000), or imprisonment for 16 months, two years, or three years, or both the fine and imprisonment in the discretion of the court.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 1065

An act to amend Sections 15003, 15100, and 15101 of, and to add Sections 15103, 15104, and 15105 to, the Fish and Game Code, relating to aquaculture.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987]

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

SECTION 1. Section 15003 of the Fish and Game Code is amended to read:

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 tax rates as provided in Section 8051.

(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.

SEC. 2. Section 15100 of the Fish and Game Code is amended to read:

15100. There is within the department an aquaculture coordinator who 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.

SEC. 3. Section 15101 of the Fish and Game Code is amended to read:

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 of one hundred dollars ($100). It is unlawful to conduct aquaculture operations or to culture approved

species of aquatic plants and animals unless registered under this section.

SEC. 4. Section 15103 is added to the Fish and Game Code, to read:

15103. (a) In addition to the fees specified in Section 15101, a surcharge fee of one hundred fifty dollars ($150) shall be paid at the time of registration by the owner of an aquaculture facility if the gross annual sales of aquaculture products of the facility during the prior calendar year exceed twenty-five thousand dollars ($25,000).

(b) Each registered aquaculturist shall maintain sales and production records which shall be made available upon request of the department to assist the department in the administration of this chapter.

(c) Any person who fails to pay the surcharge fee required in this section at the time of registration shall be assessed a delinquency penalty in an amount equal to the fees prescribed in subdivision (a).

SEC. 5. Section 15104 is added to the Fish and Game Code, to read:

15104. (a) If any person engages in the business of aquaculture, as regulated under this division, without having paid the registration fee or surcharge fee within one calendar month of the commencement of business, or, for renewal of registration, on or before April 1 of the registration year, the fees are delinquent.

(b) A penalty shall be paid at the time of registration for any fees that are delinquent in the amount of twenty-five dollars ($25) plus 1 percent of the fees due for each month or portion thereof after the date the fees become delinquent.

SEC. 6. Section 15105 is added to the Fish and Game Code, to read:

15105. (a) Notwithstanding Section 13001 or 13002, all moneys collected by the department pursuant to this division shall be deposited in the Aquaculture Account, which is hereby created in the Fish and Game Preservation Fund.

(b) Notwithstanding Section 13004, the moneys in the account are available for appropriation by the Legislature in the annual Budget Act, after its yearly review of the funding requirements, for purposes of this division.

SEC. 7. In addition to the personnel positions authorized in the Budget Act of 1987, the department shall use moneys in the Aquaculture Account in the Fish and Game Preservation Fund, upon appropriation of funds therefor, to provide one additional personnel year for the purposes of providing an aquaculture coordinator to assist in the implementation of Division 12 (commencing with Section 15000) of the Fish and Game Code.

SEC. 8. The Legislature finds and declares that Division 12 (commencing with Section 15000) of the Fish and Game Code, relating to aquaculture, was enacted by Chapter 1486 of the Statutes of 1982 without providing adequate funding and staffing to the Department of Fish and Game for its administration and

implementation. It is the Legislature's intent, by enacting this act, to provide additional funding and staffing for this purpose. It is further the Legislature's intent that the fees levied under subdivision (a) of Section 15103 shall generate additional revenue in an amount not less than thirty-five thousand dollars ($35,000) annually.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 1066

An act to amend Sections 11751.1 and 11751.3 of, and to add Sections 11751.35 and 11752.6 to, the Insurance Code, relating to insurance.

[Approved by Governor September 23, 1987 Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 11751.1 of the Insurance Code is amended to read:

11751.1. To obtain and retain a license, a rating organization shall provide satisfactory evidence to the commissioner that it will:

(a) Permit any insurer to become a member at a reasonable cost and without discrimination, or to withdraw therefrom.

(b) Neither have nor adopt any rule or exact any agreement, the effect of which would be to require any member as a condition of membership to adhere to rates, greater than the minimum adequate rates approved by the commissioner.

(c) Neither adopt any rule nor exact any agreement, the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders or members.

(d) Neither practice nor sanction any plan or act of boycott, coercion or intimidation.

(e) Neither enter into nor sanction any contract or act by which any person is restrained from lawfully engaging in the insurance business.

(f) Notify the commissioner promptly of every change in its constitution or articles of incorporation, agreement of association, or in its bylaws, rules and regulations governing the conduct of its business; its list of members; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be

served.

(g) Agree that the commissioner or his or her representative may attend all meetings of the organization or any of its committees.

(h) Agree to permit two members of the public, one representing organized labor and one representing insured employers, to serve on the managing or governing committee of the organization as specified in Section 11751.35.

(i) Maintain reasonable records of the experience of its members and of the data, statistics or information collected or used in connection with the rates, classifications, rating plans, rating systems, manual rules, and policy and endorsement forms used by its members so that such records will be available at all reasonable times to enable the commissioner to determine whether the rating organization and its members comply with the provisions of this chapter applicable to them. Such records shall be maintained in an office within this state. The commissioner may prescribe a uniform system for the keeping of such records which shall be reasonably adapted to the rating organization and its members' method of operation and which shall be applicable to all rating organizations licensed under this article and their members.

SEC. 2. Section 11751.3 of the Insurance Code is amended to read:

11751.3. Subject to the approval of the commissioner, a rating organization licensed under this article may adopt any reasonable constitution, articles of incorporation or agreement of association, and may make reasonable rules for the regulation of its members and the conduct of its business by bylaws or otherwise. In a rating organization of which the State Compensation Insurance Fund is a member, it shall be entitled without election to membership on the managing or governing committee and on the classification and rating committee thereof. In addition, the commissioner shall appoint two public members to serve on the managing or governing committee of a rating organization.

SEC. 3. Section 11751.35 is added to the Insurance Code, to read:

11751.35. Two members of the public, one representing organized labor and one representing insured employers, shall be entitled to serve on the managing or governing committee of a rating organization licensed under this article. The public members shall be entitled to vote on all issues involving rates, classifications, rating plans, rating systems, manual rules and policy, and endorsement forms which are properly brought before the managing or governing committee. In the event one or more public members are unable or unwilling to complete their term, the commissioner shall appoint a successor from labor or an insured employer to complete the term.

SEC. 4. Section 11752.6 is added to the Insurance Code, to read:

11752.6. (a) A licensed rating organization shall make available to an employer insured under a workers' compensation policy, all policyholder information contained in its records upon request of the employer and after notice to the employer's insurer.

(b) As used in this section, "policyholder information" means all information relating to the employer's loss experience, claims, classification assignments, rates and policy contracts, and includes information relating to rating plans, rating systems, and manual rules which impact the policyholder's rates.

(c) If the licensed rating organization rejects an employer's request for that information, the rating organization shall notify the employer in writing as to the reasons for the rejection. An employer whose request for that information has been rejected in whole or in part may appeal to the commissioner in accordance with Section 11753.1. If the commissioner finds that the reasons for the rejection are not justified, he or she may order the rating organization to furnish that information to the employer.

(d) No licensed rating organization or member thereof, or member of a committee of a licensed rating organization when acting in its capacity as a member of the committee, or officer or employee of a licensed rating organization, when acting within the scope of his or her employment, shall be liable to any person for injury, personal or otherwise, or damages caused or alleged to have been caused, either directly or indirectly, by the disclosure of information to an employer pursuant to this section or for the accuracy or completeness of the information so disclosed.

(e) This section shall not be construed as implying the existence of liability in circumstances not defined in this section, nor does it imply a legislative recognition that, except for enactment of this section, a liability has existed or would exist in the circumstances stated in this section.

(f) This section shall not be construed as limiting any authority of a licensed rating organization to disclose information contained in its records to others.

CHAPTER 1067

An act to amend Section 2127 of the Streets and Highways Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987]

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

SECTION 1. Section 2127 of the Streets and Highways Code is amended to read:

2127. (a) (1) Except in the case of a city or county which has made an election pursuant to paragraph (2) or (3) of this subdivision, in order to receive any allocation pursuant to Section 2126 or Section 7 of Chapter 1600 of the Statutes of 1985, the city or county, as the

case may be, shall expend for the maintenance and reconstruction, as defined in subdivision (d) of Section 2126, of its local street and highway system during the fiscal year that it receives an allocation pursuant to Section 2126 or that Section 7 not less than its base year expenditure, excluding the allocation received pursuant to Section 2126 or that Section 7, or both, during the fiscal year.

(2) A city or county may elect to expend during the two fiscal years that it receives an allocation, a total amount which is not less than twice the amount of its base year expenditure.

(3) A city may elect to expend during the two fiscal years that it receives an allocation and the following fiscal year, a total amount which is not less than three times the amount of its base year expenditure. This paragraph shall apply only to the City of Westminster, the City of San Mateo, and the City of Seal Beach.

Any city or county making an election pursuant to paragraph (2) or (3) shall so notify the Controller by December 31, 1987, and a city or county which fails to do so shall be governed by paragraph (1) of this subdivision.

This subdivision does not apply to a city or a county, including a city which filed a notice with the Controller pursuant to subdivision (g), with a population of 10,000 or less, as most recently determined by the Department of Finance.

(b) The amount allocated to a city or a county, as the case may be, shall be expended by October 30, 1988.

(c) (1) For purposes of this section, "base year expenditure" means the amount that the city or county, as the case may be, expended for patching, overlay and sealing, and reconstruction of its local street and highway system during the 1984–85 fiscal year, as reported to the Controller pursuant to Section 2151. Any city or county, with a population of 100,000 or less as of October 1, 1986, which filed a notice with the Controller pursuant to subdivision (g), may elect to have its "base year expenditure" determined on the basis of its 1983–84 fiscal year expenditures. A city or county making this election shall so notify the Controller by December 31, 1987, and the election shall not be available to a city or county which does not so notify the Controller.

(2) If the sum of the revenue received by a city or county during the fiscal year pursuant to Section 500 of Title 16, Section 104(b) (2) and (6) and Sections 125 and 144 of Title 23, and Chapter 68 (commencing with Section 5121) of Title 42 of the United States Code, and from the federal Community Block Grant Program, the federal Revenue Sharing Program, and transit assistance funds from the Transportation Planning and Development Account, which was expended for the maintenance and reconstruction of its local street and highway system during the 1984–85 fiscal year, as reported to the Controller pursuant to Section 2151, is more than the sum of funds it received from those sources during any fiscal year, the base year expenditure of the city or county, as the case may be, for the fiscal year shall be reduced by the difference between the sums. For

purposes of this paragraph, "revenue received" means that percentage of the project expenditures or the maximum reimbursable amount of eligible project costs as agreed upon by the federal government and the local agency for those projects eligible under this paragraph.

(d) For each fiscal year during which an allocation was made pursuant to Section 2126 or that Section 7, or both, the Controller shall audit the amount each county and city expended for the maintenance and reconstruction, as defined in subdivision (d) of Section 2126, of its local street and highway system during the fiscal year. For amounts allocated to cities and counties for expenditure by October 30, 1988, the audit shall be completed by October 30, 1990.

(e) (1) If the Controller determines pursuant to subdivision (d) that a county or city, for the fiscal year, expended for the maintenance and reconstruction of its local street and highway system less than the required amount determined pursuant to subdivision (a) or (b), its allocation pursuant to Section 2104 or 2107, as the case may be, shall be reduced during the next fiscal year by the amount that its expenditure is less than the required amount, but the amount of the reduction shall not exceed the amount allocated to the city or county in each fiscal year that the city or county received funds pursuant to Section 2126 or Section 7 of Chapter 1600 of the Statutes of 1985.

(2) Paragraph (1) does not apply to a city or county during the fiscal year in which it returns to the Controller the allocation it received pursuant to Section 2126 or that Section 7, or both. The city or county shall return the allocation plus any accrued interest within 30 days after receipt of the allocation.

(f) Any funds withheld or returned as a result of subdivision (e) of this section shall be reallocated to the other counties and cities whose expenditure is not less than its required amount pursuant to subdivision (b) or (c) of Section 2126, as the case may be.

(g) In the case of a city or county which on or before October 1, 1986, files with the Controller a written notice declaring the inability of the city or county to comply with the matching requirement of subdivision (a), the Controller shall postpone the penalty provisions of paragraph (1) of subdivision (e) and shall not reallocate the funds, as provided for by subdivision (f), until September 1, 1987. The notice to the Controller shall contain all of the following:

(1) The amount of 1984–85 base year matching requirements as determined by the Controller's audit.

(2) The amount the local entity will fall short of the base year matching requirement.

(3) The reasons why the city or county is unable to meet the base year matching requirement.

(4) The amounts expended by the local entity on patching, overlay, sealing, and reconstruction of its street and highway system in fiscal years 1981–82, 1982–83, and 1983–84.

The Controller shall, by November 1, 1986, transmit to the

Chairpersons of the Senate and Assembly Transportation Committees and the Joint Legislative Budget Committee the information submitted by cities and counties in the written notices provided for in this subdivision.

SEC. 2. Due to the existence of circumstances unique to the Cities of Westminster, San Mateo, and Seal Beach, the Legislature finds that a general statute may not be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and it is necessary, therefore, to limit the application of paragraph (3) of subdivision (a) of Section 2127 of the Streets and Highways Code, as proposed by Section 1 of this act, to those three named cities.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that counties and cities may receive the funds which would be made available to them by Section 2127 of the Streets and Highways Code and commence critically needed street and road repairs at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1068

An act to amend Sections 266j, 288, and 667.6 of, and to add Section 266k to, the Penal Code, relating to crimes.

[Approved by Governor September 23, 1987 Filed with Secretary of State September 24, 1987]

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

SECTION 1. Section 266j of the Penal Code is amended to read:

266j. Any person who intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available to another person, a child under the age of 16 for the purpose of any lewd or lascivious act as defined in Section 288, or who causes, induces, or persuades a child under the age of 16 to engage in such an act with another person, is guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years, and by a fine not to exceed fifteen thousand dollars ($15,000).

SEC. 2. Section 266k is added to the Penal Code, to read:

266k. (a) Upon the conviction of any person for a violation of Section 266h, 266i, or 266j, the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed five thousand dollars ($5,000). In setting the amount of the fine, the court shall consider any relevant factors including, but not limited to, the seriousness and gravity of the offense and the circumstances of its commission, whether the

defendant derived any economic gain as the result of the crime, and the extent to which the victim suffered losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs under Section 13837.

(b) If the court orders a fine to be imposed pursuant to this section, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 3. Section 288 of the Penal Code is amended to read:

288. (a) Any person who shall willfully and lewdly commit any lewd or lascivious act including any of the acts constituting other crimes provided for in Part 1 of this code upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of such child, shall be guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years.

(b) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be guilty of a felony and shall be imprisoned in the state prison for a term of three, six or eight years.

(c) In any arrest or prosecution under this section the peace officer, the district attorney, and the court shall consider the needs of the child victim and shall do whatever is necessary and constitutionally permissible to prevent psychological harm to the child victim.

(d) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed five thousand dollars ($5,000). In setting the amount of the fine, the court shall consider any relevant factors including, but not limited to, the seriousness and gravity of the offense, and the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

If the court orders a fine to be imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 4. Section 667.6 of the Penal Code is amended to read:

667.6. (a) Any person who is found guilty of violating subdivision (2) or (3) of Section 261, Section 264.1, subdivision (b) of Section 288, Section 289, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person who has been convicted previously of any of those offenses shall receive a five-year enhancement for each of those prior convictions provided that no enhancement shall be imposed under this subdivision for any conviction occurring prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the five-year enhancement imposed under this subdivision, the court may also impose a fine not to exceed twenty thousand dollars ($20,000) for anyone sentenced under these provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.

(b) Any person convicted of an offense specified in subdivision (a) who has served two or more prior prison terms as defined in Section 667.5 for any offense specified in subdivision (a), shall receive a 10-year enhancement for each of those prior terms provided that no additional enhancement shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the 10-year enhancement imposed under this subdivision, the court may also impose a fine not to exceed twenty thousand dollars ($20,000) for any person sentenced under this subdivision. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.

(c) In lieu of the term provided in Section 1170.1, a full, separate, and consecutive term may be imposed for each violation of subdivision (2) or (3) of Section 261, Section 264.1, subdivision (b) of Section 288, Section 289, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person whether or not the crimes were committed during a single transaction. If the term is imposed consecutively pursuant to this subdivision, it shall be served consecutively to any other term of imprisonment, and shall commence from the time the person would otherwise have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed

subsequent to that term shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(d) A full, separate, and consecutive term shall be served for each violation of subdivision (2) or (3) of Section 261, Section 264.1, subdivision (b) of Section 288, Section 289, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person if the crimes involve separate victims or involve the same victim on separate occasions.

In determining whether crimes against a single victim were committed on separate occasions under this subdivision, the court shall consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon his or her actions and nevertheless resumed sexually assaultive behavior. Neither the duration of time between crimes, nor whether or not the defendant lost or abandoned his or her opportunity to attack, shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions.

The term shall be served consecutively to any other term of imprisonment, and shall commence from the time the person would otherwise have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(e) If the court orders a fine to be imposed pursuant to subdivision (a) or (b), the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 1069

An act to amend Sections 1520, 1520.3, 1550, 1569.10, 1569.15, 1569.16, 1569.50, 1596.851, 1596.853, 1596.86, 1596.885, 1596.95, and 1597.54 of, and to add Section 1596.83 to, the Health and Safety Code, relating to social services.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 1520 of the Health and Safety Code is amended to read:

1520. Any person desiring issuance or renewal of a license for a community care facility or a special permit for specialized services under this chapter shall file with the department, pursuant to regulations, an application on forms furnished by the department, which shall include, but not be limited to:

(a) Evidence satisfactory to the department of the ability of the applicant to comply with this chapter and of rules and regulations promulgated under this chapter by the department. Where there is an application for renewal of a license, evidence satisfactory to the department that the licensee has substantially complied for the term of the previous license with this chapter, and with the rules and regulations promulgated pursuant to this chapter.

(b) Evidence satisfactory to the department that the applicant is of reputable and responsible character. The evidence shall include, but not be limited to, a criminal record clearance pursuant to Section 1522, employment history, and character references. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, like evidence shall be submitted as to the members or shareholders thereof, and the person in charge of the community care facility for which application for issuance or renewal of license or special permit is made.

(c) Evidence satisfactory to the department that the applicant has sufficient financial resources to maintain the standards of service required by regulations adopted pursuant to this chapter.

(d) Disclosure of the applicant's prior or present service as an administrator, general partner, corporate officer or director of, or as a person who has held or holds a beneficial ownership of 10 percent or more in, any community care facility or in any facility licensed pursuant to Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250).

(e) Disclosure of any revocation or other disciplinary action taken, or in the process of being taken, against a license held or previously held by the entities specified in subdivision (c).

(f) A signed statement that the person desiring issuance or renewal of a license or special permit has read and understood the

community care facility licensure statute and regulations which pertain to the applicant's category of licensure.

(g) Any other information which may be required by the department for the proper administration and enforcement of this chapter.

(h) In implementing this section, the department shall give due consideration to the functions of each separate licensing category.

(i) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in regulations of the department has not been provided, or not provided in the form requested by the licensing agency, or both.

SEC. 2. Section 1520.3 of the Health and Safety Code is amended to read:

1520.3. (a) If an application for a license or special permit indicates, or the state department determines during the application review process, that the applicant previously was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), 2 (commencing with Section 1250), 3.3 (commencing with Section 1569), 3.4 (commencing with Section 1596.70), 3.5 (commencing with Section 1596.90), or 3.6 (commencing with Section 1597.30) and such prior license was revoked within the preceding two years, the state department shall cease any further review of the application until two years shall have elapsed from the date of such revocation. The cessation of review shall not constitute a denial of the application for purposes of Section 1526 or any other provision of law.

(b) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in subdivision (a) and the application was denied and the denial was upheld after an opportunity for hearing within the last year, the department shall cease further review of the application until one year has elapsed from the date of the decision upholding the denial. The cessation of review shall not constitute a denial of the application.

SEC. 3. Section 1550 of the Health and Safety Code is amended to read:

1550. The state department may deny an application for, or suspend or revoke, any license, registration, or special permit issued under this chapter upon any of the following grounds and in the manner provided in this chapter:

(a) Violation by the licensee, registrant, or holder of a special permit of this chapter or of the rules and regulations promulgated under this chapter.

(b) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations promulgated under this chapter.

(c) Conduct which is inimical to the health, morals, welfare, or

safety of either an individual in, or receiving services from, the facility or the people of the State of California.

(d) The conviction of a licensee, or other person mentioned in Section 1522, at any time during licensure, of a crime as defined in Section 1522.

(e) The licensee of any facility or the person providing direct care or supervision knowingly allows any child to have illegal drugs or alcohol on the licensed premises.

The director may temporarily suspend any license, registration, or special permit, prior to any hearing when, in the opinion of the director, the action is necessary to protect residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall notify the licensee, registrant, or holder of the special permit of the temporary suspension and the effective date of the temporary suspension and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation by the licensee, registrant, or holder of the special permit, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the original hearing has been completed.

SEC. 4. Section 1569.10 of the Health and Safety Code is amended to read:

1569.10. No person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct, or maintain a residential facility for the elderly in this state without a current valid license or current valid special permit therefor, as provided in this chapter.

SEC. 5. Section 1569.15 of the Health and Safety Code is amended to read:

1569.15. Any person desiring issuance or renewal of a license for a residential care facility for the elderly under this chapter shall file with the department, pursuant to regulations, an application on forms furnished by the department, which shall include, but not be limited to:

(a) Evidence satisfactory to the department of the ability of the applicant to comply with this chapter and of rules and regulations adopted under this chapter by the department. Where there is an application for renewal of a license, evidence satisfactory to the department that the licensee has substantially complied for the term of the previous license with this chapter, and with the rules and regulations adopted pursuant to this chapter.

(b) Evidence satisfactory to the department that the applicant is of reputable and responsible character. The evidence shall include,

but not be limited to, a criminal record clearance pursuant to Section 1569.17, employment history, and character references. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, like evidence shall be submitted as to the members or shareholders thereof, and the person in charge of the residential care facility for the elderly which application for issuance or renewal of license or special permit is made.

(c) Evidence satisfactory to the department that the applicant has sufficient financial resources to maintain the standards of service required by regulations adopted pursuant to this chapter.

(d) Disclosure of the applicant's prior or present service as an administrator, general partner, corporate officer or director of, or as a person who has held or holds a beneficial ownership of 10 percent or more in, any residential care facility for the elderly or in any facility licensed pursuant to Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), or Chapter 3 (commencing with Section 1500).

(e) Disclosure of any revocation or other disciplinary action taken, or in the process of being taken, against a license held or previously held by the entities specified in subdivision (c).

(f) Any other information as may be required by the department for the proper administration and enforcement of this chapter.

(g) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in regulations of the department has not been provided, or not provided in the form requested by the licensing agency, or both.

(h) Following the implementation of Article 7 (commencing with Section 1569.70) evidence satisfactory to the department of the applicant's ability to meet regulatory requirements for the level of care the facility intends to provide.

(i) Evidence satisfactory to the department of adequate knowledge of supportive services and other community supports which may be necessary to meet the needs of elderly residents.

(j) A signed statement that the person desiring issuance or renewal of a license has read and understood the residential care facility for the elderly statute and regulations.

SEC. 6. Section 1569.16 of the Health and Safety Code is amended to read:

1569.16. (a) If an application for a license indicates, or the department determines during the application review process, that the applicant previously was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), 2 (commencing with Section 1250), 3 (commencing with Section 1500), 3.4 (commencing with Section 1596.70), 3.5 (commencing with Section 1596.90), or 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall

have elapsed from the date of the revocation. The cessation of review shall not constitute a denial of the application for purposes of Section 1569.22 or any other provision of law. All residential care facilities for the elderly are exempt from the health planning requirements contained in Part 1.5 (commencing with Section 437) of Division 1.

(b) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in subdivision (a) and the application was denied and the denial was upheld after an opportunity for hearing within the last year, the department shall cease further review of the application until one year has elapsed from the date of the decision upholding the denial. The cessation of review shall not constitute a denial of the application.

SEC. 7. Section 1569.50 of the Health and Safety Code is amended to read:

1569.50. The department may deny an application for a license or may suspend or revoke any license issued under this chapter upon any of the following grounds and in the manner provided in this chapter:

(a) Violation by the licensee of this chapter or of the rules and regulations adopted under this chapter.

(b) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations adopted under this chapter.

(c) Conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility or the people of the State of California.

(d) The conviction of a licensee, or other person mentioned in Section 1569.17 at any time during licensure, of a crime as defined in Section 1569.17.

The director may temporarily suspend any license, prior to any hearing when, in the opinion of the director, the action is necessary to protect residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall notify the licensee of the temporary suspension and the effective date of the temporary suspension and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the original hearing has been completed.

SEC. 8. Section 1596.83 is added to the Health and Safety Code, to read:

1596.83. An applicant or licensee shall file his or her mailing

address, in writing, with the department and, shall notify the department, in writing, of any change within 10 calendar days.

SEC. 9. Section 1596.851 of the Health and Safety Code is amended to read:

1596.851. (a) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a license under this act or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3 (commencing with Section 1500), or Chapter 3.3 (commencing with Section 1569) and that the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of the revocation. Cessation of review shall not constitute a denial of the application.

(b) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in subdivision (a) and the application was denied and the denial was upheld after opportunity for hearing within the last year, the department shall cease further review of the application until one year has elapsed from the date of the decision upholding the denial. The cessation of review shall not constitute a denial of the application.

SEC. 10. Section 1596.853 of the Health and Safety Code is amended to read:

1596.853. (a) Any person may request an inspection of any child day care facility in accordance with the California Child Day Care Facilities Act by transmitting to the department notice of an alleged violation of applicable requirements prescribed by the statutes or regulations of this state. A complaint may be made either orally or in writing.

(b) The substance of the complaint shall be provided to the licensee no earlier than at the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint provided the licensee nor any copy of the complaint or any record published, released, or otherwise made available to the licensee shall disclose the name of any person mentioned in the complaint, except the name of any duly authorized officer, employee, or agent of the department conducting the investigation or inspection pursuant to this chapter.

(c) Upon receipt of a complaint, the department shall make a preliminary review and, unless the department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, the department shall make an onsite inspection within 10 days after receiving the complaint, except where the visit would adversely affect the licensing investigation or the investigation of other agencies, including, but not limited to, law enforcement agencies. In either event, the complainant shall be

promptly informed of the department's proposed course of action.

(d) (1) Upon issuance of a license for a child day care facility or upon denial, revocation, or temporary suspension of a license or within 24 hours of a finding that physical abuse or sexual abuse has occurred, the department shall notify the resource and referral agency funded under Section 8210 of the Education Code for that jurisdiction.

The resource and referral agency shall be notified of the final resolution.

(2) With the exception of parents seeking local day care service, any other entity specified in subdivision (b) of Section 1596.86 may request that the department provide the notification described in paragraph (1).

(e) When the department substantiates an allegation which it deems to be serious, in a facility funded by the Child Development Division of the State Department of Education pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code it shall notify the Child Development Division.

SEC. 11. Section 1596.86 of the Health and Safety Code is amended to read:

1596.86. (a) The director shall annually publish and make available to interested persons a list or lists covering all licensed child day care facilities, other than small family day care homes, and the services for which each facility has been licensed or issued a special permit. The lists shall also specify the licensed capacity of the facility and whether it is licensed by the department or by another public agency.

(b) To encourage the recruitment of small family day care homes and protect their personal privacy, the department shall prevent the use of lists containing names, addresses and other identifying information of facilities identified as small family day care homes, except as necessary for administering the licensing program, facilitating the placement of children in these facilities, and providing the names and addresses to resource and referral agencies funded by the State Department of Education, food and nutrition programs funded by the State Department of Education, alternative payment programs funded by the State Department of Education, county programs under the Greater Avenues for Independence Act of 1985 (Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code), family day care organizations, or specialized health care service plans licensed under the Knox-Keene Health Care Service Plan Act of 1975, as contained in Chapter 2.5 (commencing with Section 1340), which provide employee assistance program services that include child care referral services. Upon request, parents seeking local day care services may receive the names and telephone numbers of local small family day care providers.

(c) The department, in consultation with the Child Development Division of the State Department of Education, shall adopt

regulations relating to the confidentiality of information provided pursuant to subdivision (b) on small family day care homes. These regulations shall include procedures for updating lists or other information on small family day care providers to ensure referral only to licensed homes in good standing with the department. Any person or entity violating the regulations under this subdivision may be denied access by the department to information on small family day care homes and shall be reported by the department to the appropriate funding or licensing department.

SEC. 12. Section 1596.885 of the Health and Safety Code is amended to read:

1596.885. The department may deny an application for or suspend or revoke any license, registration, or special permit issued under this act upon any of the following grounds and in the manner provided in this act:

(a) Violation by the licensee, registrant, or holder of a special permit of this act or of the rules and regulations promulgated under this act.

(b) Aiding, abetting, or permitting the violating of this act or of the rules and regulations promulgated under this act.

(c) Conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility or the people of this state.

(d) The conviction of a licensee, or other person specified in Section 1596.871, at any time during licensure, of a crime as defined in Section 1596.871.

SEC. 13. Section 1596.95 of the Health and Safety Code is amended to read:

1596.95. Any person desiring issuance or renewal of a license for a day care center or a special permit for specialized services in a day care center under the provisions of this chapter shall file with the department pursuant to regulations, an application on forms furnished by the department, which shall include, but not be limited to, all of the following:

(a) Evidence satisfactory to the department of the ability of the applicant to comply with the provisions of this act and of rules and regulations promulgated under this act by the department. Where there is an application for renewal of a license, evidence satisfactory to the department that the licensee has substantially complied for the term of the previous license with the provisions of this act, and with the rules and regulations promulgated pursuant to this act.

(b) Evidence satisfactory to the department that the applicant is a reputable and responsible character. This evidence shall include, but not be limited to, a criminal record clearance pursuant to Section 1596.871, employment history, and character references. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, evidence of reputable and responsible character shall be submitted as to the members or shareholders thereof, and the person in charge of the day care center

for which application for issuance or renewal of license or special permit is made.

(c) Evidence satisfactory to the department that the applicant has sufficient financial resources to maintain the standards of service required by regulations adopted pursuant to this act. The information shall be required only upon initial application for licensure, and when requested by the department, in writing, explaining the need for the evidence as part of the department's investigative function.

(d) Disclosure of the applicant's prior or present service as an administrator, general partner, corporate officer, or director of, or as a person who has held or holds a beneficial ownership of 10 percent or more in any child day care facility or in any facility licensed pursuant to Chapter 1 (commencing with Section 1200), 2 (commencing with Section 1250), or 3 (commencing with Section 1500).

(e) Disclosure of any revocation or other disciplinary action taken, or in the process of being taken, against a license held or previously held by the entities specified in subdivision (d).

(f) Such other information as may be required by the department for the proper administration and enforcement of this act.

(g) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in regulations of the department has not been provided, or not provided in the form reqqested by the licensing agency, or both.

SEC. 14. Section 1597.54 of the Health and Safety Code is amended to read:

1597.54. All family day care homes for children, shall apply for an initial license under this chapter, except that any home which on June 28, 1981, had a valid and unexpired license to operate as a family day care home for children under other provisions of law shall be deemed to have a license under this chapter for the unexpired term of the license at which time it may be renewed upon fulfilling the requirements of this chapter.

An applicant for initial licensure as a family day care home for children shall file with the department, pursuant to its regulations, an application on forms furnished by the department, which shall include, but not be limited to, all of the following:

(a) A brief statement confirming that the applicant is financially secure to operate a family day care home for children. The department shall not require any other specific or detailed financial disclosure.

(b) Evidence that the small family day care home contains a fire extinguisher or smoke detector device, or both, which meets standards established by the State Fire Marshal under subdivision (d) of Section 1597.45 or evidence that the large family day care home meets the standards established by the State Fire Marshal

under subdivision (d) of Section 1597.46.

(c) The fingerprints of any applicant of a family day care home license, and any other adult, as required under subdivision (b) of Section 1596.871.

(d) Evidence of a current tuberculosis clearance for any adult in the home during the time that children are under care.

(e) Evidence satisfactory to the department of the ability of the applicant to comply with this chapter and Chapter 3.4 (commencing with Section 1596.70) and the regulations adopted pursuant to those chapters.

(f) Evidence satisfactory to the department that the applicant and all other persons residing in the home are of reputable and responsible character. The evidence shall include, but not be limited to, a criminal record clearance pursuant to Section 1596.871, employment history, and character references.

(g) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in regulations of the department has not been provided, or not provided in the form requested by the licensing agency, or both.

(h) Such other information as may be required by the department for the proper administration and enforcement of the act.

CHAPTER 1070

An act to amend Section 11019 of, and to add Section 25508.8 to, the Government Code, relating to contracts.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 11019 of the Government Code is amended to read:

11019. (a) Any department or authority specified in subdivision (b) may, upon determining that an advance payment is essential for the effective implementation of a program within the provisions of this section, and to the extent funds are available, and not more frequently than once each fiscal year, advance to a community-based private nonprofit agency with which it has contracted, pursuant to federal law and related state law, for the delivery of services, not to exceed 25 percent of the annual allocation to be made pursuant to the contract and those laws, during the fiscal year to the private nonprofit agency. Advances in excess of 25 percent may be made on contracts financed by a federal program when the advances are not prohibited by federal guidelines. Advance payments may be

provided for services to be performed under any contract with a total annual contract amount of four hundred thousand dollars ($400,000) or less. This amount shall be increased by 5 percent, as determined by the Department of Finance, for each year commencing with 1989. Advance payments may also be made with respect to any contract which the Department of Finance determines has been entered into with any community-based private nonprofit agency with modest reserves and potential cash-flow problems. No advance payment shall be granted if the total annual contract exceeds four hundred thousand dollars ($400,000), without the prior approval of the Department of Finance.

The specific departments and authority mentioned in subdivision (b) shall develop a plan to establish control procedures for advance payments. Each plan shall include a procedure whereby the department or authority determines whether or not an advance payment is essential for the effective implementation of a particular program being funded. Each plan is required to be approved by the Department of Finance.

(b) Subdivision (a) shall apply to the Emergency Medical Service Authority, the Department of Aging and Long-Term Care, the State Department of Alcohol and Drug Programs, the Department of Corrections, the Department of Economic Opportunity, the Employment Development Department, the State Department of Health Services, the State Department of Mental Health, the Department of Rehabilitation, the State Department of Social Services, the Department of the Youth Authority, and the Department of Education.

Subdivision (a) shall also apply to the Health and Welfare Agency which may make advance payments, pursuant to the requirements of that subdivision, to multipurpose senior services projects as established in Sections 9400 to 9413, inclusive, of the Welfare and Institutions Code.

(c) A county may, upon determining that an advance payment is essential for the effective implementation of a program within the provisions of this section, and to the extent funds are available, and not more frequently than once each fiscal year, advance to a community-based private nonprofit agency with which it has contracted, pursuant to any applicable federal or state law, for the delivery of services, not to exceed 25 percent of the annual allocation to be made pursuant to the contract and those laws, during the fiscal year to the private nonprofit agency.

SEC. 2. Section 25508.8 is added to the Government Code, to read:

25508.8. (a) The board of supervisors of any county may, by resolution, authorize the purchasing agent to procure construction materials pursuant to Section 25508 for the construction of facilities to be utilized by a regional opportunity program.

(b) A county shall be exempt from requirements of the Public Contract Code with respect to the construction of a facility if the

majority of labor utilized for the construction of the facility pursuant to subdivision (a) is provided by the regional opportunity program or volunteer labor, the facility is to be constructed for use by the regional opportunity program, and the land on which the facility is to be constructed is currently used by a county jail.

CHAPTER 1071

An act to amend Section 4451 of the Welfare and Institutions Code, relating to disabilities.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 4451 of the Welfare and Institutions Code is amended to read:

4451. The state hospitals may manufacture supplies, materials, and assisting devices which are for the benefit of individuals with disabilities who otherwise would not have access to those articles, or which are necessary or required to be used in any of the state hospitals, and which can be economically manufactured therein. The necessary cost and expense of providing for and conducting the manufacture of such supplies and materials shall be paid in the same manner as other expenses of the hospitals. No hospital shall enter into or engage in manufacturing any supplies or materials unless permission for the same is obtained from the State Department of Developmental Services. If, at any time, it appears to the department that the manufacture of any article is not being or cannot be economically carried on at a state hospital, the department may suspend or stop the manufacture of such article, and on receipt of a certified copy of the order directing the suspension or stopping of such manufacture, by the medical superintendent, the hospital shall cease from manufacturing such article.

CHAPTER 1072

An act to add Section 3343.5 to the Civil Code, and to add Chapter 12.7 (commencing with Section 570) to Title 13 of Part 1 of the Penal Code, relating to motor vehicle subleasing.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 3343.5 is added to the Civil Code, to read:

3343.5. (a) Any one or more of the following who suffers any damage proximately resulting from one or more acts of unlawful motor vehicle subleasing, as described in Chapter 12.7 (commencing with Section 570) of Title 13 of Part 1 of the Penal Code, may bring an action against the person who has engaged in those acts:

(1) A seller or other secured party under a conditional sale contract or a security agreement.

(2) A lender under a direct loan agreement.

(3) A lessor under a lease contract.

(4) A buyer under a conditional sale contract.

(5) A purchaser under a direct loan agreement, an agreement which provides for a security interest, or an agreement which is equivalent to these types of agreements.

(6) A lessee under a lease contract.

(7) An actual or purported transferee or assignee of any right or interest of a buyer, a purchaser, or a lessee.

(b) The court in an action under subdivision (a) may award actual damages; equitable relief, including, but not limited to, an injunction and restitution of money and property; punitive damages; reasonable attorney's fees and costs; and any other relief which the court deems proper.

(c) As used in this section, the following terms have the following meanings:

(1) "Buyer" has the meaning set forth in subdivision (c) of Section 2981.

(2) "Conditional sale contract" has the meaning set forth in subdivision (a) of Section 2981. Notwithstanding subdivision (k) of Section 2981, "conditional sale contract" includes any contract for the sale or bailment of a motor vehicle between a buyer and a seller primarily for business or commercial purposes.

(3) "Direct loan agreement" means an agreement between a lender and a purchaser whereby the lender has advanced funds pursuant to a loan secured by the motor vehicle which the purchaser has purchased.

(4) "Lease contract" means a lease contract between a lessor and lessee as this term and these parties are defined in Section 2985.7. Notwithstanding subdivision (d) of Section 2985.7, "lease contract"

includes a lease for business or commercial purposes.

(5) "Motor vehicle" means any vehicle required to be registered under the Vehicle Code.

(6) "Person" means an individual, company, firm, association, partnership, trust, corporation, or other legal entity.

(7) "Purchaser" has the meaning set forth in subdivision (33) of Section 1201 of the Commercial Code.

(8) "Security agreement" and "secured party" have the meanings set forth, respectively, in paragraphs (*l*) and (m) of subdivision (1) of Section 9105 of the Commercial Code. "Security interest" has the meaning set forth in subdivision (37) of Section 1201 of the Commercial Code.

(9) "Seller" has the meaning set forth in subdivision (b) of Section 2981, and includes the present holder of the conditional sale contract.

(d) The rights and remedies provided in this section are in addition to any other rights and remedies provided by law.

SEC. 2. Chapter 12.7 (commencing with Section 570) is added to Title 13 of Part 1 of the Penal Code, to read:

CHAPTER 12.7. UNLAWFUL SUBLEASING OF MOTOR VEHICLES

570. An act of unlawful subleasing of a motor vehicle, as defined in Section 571, shall be punishable by imprisonment in the state prison or in the county jail for not more than one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

571. (a) A person engages in an act of unlawful subleasing of a motor vehicle if all of the following conditions are met:

(1) The motor vehicle is subject to a lease contract, conditional sale contract, or security agreement the terms of which prohibit the transfer or assignment of any right or interest in the motor vehicle or under the lease contract, conditional sale contract, or security agreement.

(2) The person is not a party to the lease contract, conditional sale contract, or security agreement.

(3) The person transfers or assigns, or purports to transfer or assign, any right or interest in the motor vehicle or under the lease contract, conditional sale contract, or security agreement, to any person who is not a party to the lease contract, conditional sale contract, or security agreement.

(4) The person does not obtain, prior to the transfer or assignment described in paragraph (3), written consent to the transfer or assignment from the motor vehicle's lessor, seller, or secured party.

(5) The person receives compensation or some other consideration for the transfer or assignment described in paragraph (3).

(b) A person engages in an act of unlawful subleasing of a motor vehicle when the person is not a party to the lease contract, conditional sale contract, or security agreement, and assists, causes,

or arranges an actual or purported transfer or assignment, as described in subdivision (a).

572. (a) The actual or purported transfer or assignment, or the assisting, causing, or arranging of an actual or purported transfer or assignment, of any right or interest in a motor vehicle or under a lease contract, conditional sale contract, or security agreement, by an individual who is a party to the lease contract, conditional sale contract, or security agreement is not an act of unlawful subleasing of a motor vehicle and is not subject to prosecution.

(b) This chapter shall not affect the enforceability of any provision of any lease contract, conditional sale contract, security agreement, or direct loan agreement by any party thereto.

573. (a) The penalties under this chapter are in addition to any other remedies or penalties provided by law for the conduct proscribed by this chapter.

(b) If any provision of this chapter or the application thereof to any person or circumstance is held to be unconstitutional, the remainder of the chapter and the application of its provisions to other persons and circumstances shall not be affected thereby.

574. As used in this chapter, the following terms have the following meanings:

(a) "Buyer" has the meaning set forth in subdivision (c) of Section 2981 of the Civil Code.

(b) "Conditional sale contract" has the meaning set forth in subdivision (a) of Section 2981 of the Civil Code. Notwithstanding subdivision (k) of Section 2981 of the Civil Code, "conditional sale contract" includes any contract for the sale or bailment of a motor vehicle between a buyer and a seller primarily for business or commercial purposes.

(c) "Direct loan agreement" means an agreement between a lender and a purchaser whereby the lender has advanced funds pursuant to a loan secured by the motor vehicle which the purchaser has purchased.

(d) "Lease contract" means a lease contract between a lessor and lessee as this term and these parties are defined in Section 2985.7 of the Civil Code. Notwithstanding subdivision (d) of Section 2985.7 of the Civil Code, "lease contract" includes a lease for business or commercial purposes.

(e) "Motor vehicle" means any vehicle required to be registered under the Vehicle Code.

(f) "Person" means an individual, company, firm, association, partnership, trust, corporation, or other legal entity.

(g) "Purchaser" has the meaning set forth in subdivision (33) of Section 1201 of the Commercial Code.

(h) "Security agreement" and "secured party" have the meanings set forth, respectively, in paragraphs (*l*) and (m) of subdivision (1) of Section 9105 of the Commerical Code. "Security interest" has the meaning set forth in subdivision (37) of Section 1201 of the Commercial Code.

(i) "Seller" has the meaning set forth in subdivision (b) of Section 2981 of the Civil Code, and includes the present holder of the conditional sale contract.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 1073

An act to add Article 9.5 (commencing with Section 19889.6) to Chapter 2.5 of Part 2.6 of Division 5 of Title 2 of the Government Code, relating to state employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Article 9.5 (commencing with Section 19889.6) is added to Chapter 2.5 of Part 2.6 of Division 5 of Title 2 of the Government Code, to read:

Article 9.5. Benefits

19889.6. The department, in accordance with Section 125 of the Internal Revenue Code shall authorize any member of Bargaining Unit 6 to elect to receive one or more employee benefits, in lieu of a portion of the compensation provided to the employee.

Any such benefit shall satisfy the requirements of Section 125 of the Internal Revenue Code. The exclusive representative of Bargaining Unit 6 shall choose an administrator to administer the benefit. The administrator shall have a demonstrable record of administering employee benefit programs which are in compliance with Section 125 of the Internal Revenue Code and with the federal Employee Retirement Income Security Act of 1974. All costs of administering this benefit shall be paid by members of Bargaining Unit Six.

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 that the options provided for under this act may be exercised during the current fiscal year, it is necessary that this act take effect immediately.

CHAPTER 1074

An act to amend Sections 61345, 61407.4, 61409, 61411, 61411.2, 61411.4, 61411.5, 61415.1, 61415.2, 61415.3, 61810, 61901, 62186.1, 62191, 62193, 62195, 62198, 62199, 62200, 62201, 62202, 62241.5, 62501, 62504, 62560, 62561, 62563, 62564, 62564.5, 62568, 62570, 62580, 62581, 62585, 62603, 62604, 62623, 62640, 62662, 62665, and 62667 of, to add Sections 62508 and 62641 to, to repeal Section 62664 of, and to repeal and add Sections 61531 and 62571 of, the Food and Agricultural Code, relating to milk, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 61345 of the Food and Agricultural Code is amended to read:

61345. Chapter 2 (commencing with Section 61801), Chapter 2.5 (commencing with Section 62500), and Chapter 3 (commencing with Section 62700) shall be liberally construed as being complementary of, and supplemental to, this chapter, and these chapters shall constitute a single comprehensive scheme for the regulation of the production and handling of milk. However, each of the chapters, and each article, section, subdivision, sentence, clause, and phrase of each chapter is severable.

If one of the chapters or any article, section, subdivision, sentence, clause, or phrase of any one of the chapters is for any reason held void, invalid, or unconstitutional, the decision shall not affect the validity of any other chapter or any of its articles, sections, subdivisions, sentences, clauses, or phrases.

SEC. 2. Section 61407.4 of the Food and Agricultural Code is amended to read:

61407.4. (a) The director may bring an action against a surety bond company if the company fails to do any of the following:

(1) Acknowledge promptly and act reasonably upon receiving a bond demand from the director.

(2) Promptly investigate and process claims.

(3) Make fair and equitable settlement of claims.

(4) Pay the bond amount to the director.

(b) The authority provided in subdivision (a) is in addition to the authority provided for in subdivision (h) of Section 790.03 of the Insurance Code.

(c) In addition to the bond proceeds, the surety bond company may be ordered to pay interest at the prevailing prime rate on the amounts owed from the date the claim was filed, all of the department's court costs, and reasonable attorney's fees.

SEC. 3. Section 61409 of the Food and Agricultural Code is

amended to read:

61409. The failure of any manufacturing milk handler that purchases manufacturing milk from producers to execute and deliver the bond as provided and required in this article is a violation of this chapter. The failure of any handler to post any additional bond as may be required is also a violation of this chapter.

SEC. 4. Section 61411 of the Food and Agricultural Code is amended to read:

61411. Except as otherwise provided in Section 61411.2 or 61411.3, the purchase of any manufacturing milk in excess of 1,000 gallons monthly from any manufacturing milk producer without a written contract that has been executed and complies with all the requirements of this article is an unlawful practice. The contract shall include all of the following:

(a) The amount of manufacturing milk which is to be purchased for any period.

(b) The price to be paid for all manufacturing milk received.

(c) The date and method of payment for the manufacturing milk. Payment shall be made for approximately one-half of the manufacturing milk delivered in any calendar month not later than the first day of the following month and the remainder not later than the 15th day of that month.

(d) The charges for transportation, if hauled by the handler, which shall be the lower of either of the following:

(1) A rate not in excess of the rate charged for actual or reasonably similar services by highway carriers, as the term "highway carrier" is defined in Section 3511 of the Public Utilities Code.

(2) The actual amount paid by a handler for that transportation.

The contract may contain any other provisions that are not in conflict with this chapter. A signed copy of the contract shall be filed by the producer with the director within five days of the date of its execution.

This section does not apply to the purchase of milk which does not meet market milk standards in Chapter 2 (commencing with Section 35751) of Part 2 of Division 15, when the milk has been processed on a dairy farm that held a valid market milk permit during the 30-day period preceding the purchase.

SEC. 5. Section 61411.2 of the Food and Agricultural Code is amended to read:

61411.2. Section 61411 does not apply to the purchase of manufacturing milk which is necessary to meet an unanticipated increase in demand or an unanticipated shortage in the supply of a handler if the quantity purchased from any one producer does not exceed 5,000 gallons in any one month. However, if the producer is a cooperative association acting as a producer, the total quantity purchased shall not exceed 30,000 gallons per month.

SEC. 6. Section 61411.4 of the Food and Agricultural Code is amended to read:

61411.4. Any contract between a producer and a handler shall be

voidable by the producer for a 45-day period following the occurrence of either of the following:

(a) The handler has failed to pay the producer the full price specified in the contract or has failed to comply with the terms specified in subdivision (c) of Section 61411, and the failure has not been corrected by the handler within one business day after notification by the producer or director. The 45-day period shall commence on the day after the payment was due.

(b) The handler has failed on three separate occasions within a 12-month period to pay the producer the full price specified in the contract or has failed to comply with the terms specified in subdivision (c) of Section 61411. The 45-day period shall commence on the day after the third occurrence.

SEC. 7. Section 61411.5 of the Food and Agricultural Code is amended to read:

61411.5. If a notice has been issued by the director that the future deliveries to the handler shall not be covered under the Milk Producers Security Trust Fund created pursuant to Chapter 2.5 (commencing with Section 62500), all contracts between producers and the handler are voidable by the producers. Producers shall have the option to void their contracts for a 45-day period from the date the notice is issued or until the date the director establishes for reinstatement of the handler's eligibility under the trust fund, whichever is later.

SEC. 8. Section 61415.1 of the Food and Agricultural Code is amended to read:

61415.1. (a) Handlers shall pay producers either by check or cash. Handlers electing to pay producers in cash shall, in all cases, obtain a dated, signed receipt from each producer. These receipts shall be made a part of the permanent records of the handler. Handlers paying by check shall issue checks which are reduceable to cash by the producer in no more than one business day.

(b) The giving of a promissory note is not payment within the meaning of this chapter.

SEC. 9. Section 61415.2 of the Food and Agricultural Code is amended to read:

61415.2. If a handler fails to pay for manufacturing milk delivered to him or her at the time and in the manner specified in the contract, the handler shall pay the producer interest on the unpaid amount from the time the payment was due until paid at the rate of 12 percent per annum. The interest is in addition to any other penalties provided for in this chapter.

SEC. 10. Section 61415.3 of the Food and Agricultural Code is amended to read:

61415.3. If a handler fails to pay for manufacturing milk delivered to him or her at the time and in the manner specified in this chapter, the director may assess a penalty for each payment date that the producers were not fully paid. Any penalty assessed shall be a minimum of one hundred dollars ($100) for each payment date. If

the amount not properly paid is more than forty thousand dollars ($40,000), the penalty assessed shall be five thousand dollars ($5,000) or one-fourth of 1 percent of the amount not properly paid, whichever is less.

SEC. 11. Section 61531 of the Food and Agricultural Code is repealed.

SEC. 12. Section 61531 is added to the Food and Agricultural Code, to read:

61531. All money received by the director pursuant to this chapter shall be paid monthly into the State Treasury to the credit of the Department of Food and Agriculture Fund. Funds which are so collected may only be used to defray the expenses in connection with the administration of this chapter, Chapter 2 (commencing with Section 61801), and Chapter 2.5 (commencing with Section 62500).

SEC. 13. Section 61810 of the Food and Agricultural Code is amended to read:

61810. Chapter 1 (commencing with Section 61301), Chapter 2.5 (commencing with Section 62500), and Chapter 3 (commencing with Section 62700) shall be liberally construed as being complementary of, and supplemental to, this chapter, and these chapters shall constitute a single comprehensive scheme for the regulation of the production and handling of market milk. However, each of the chapters, and each article, section, subdivision, sentence, clause, and phrase of each chapter is severable.

If one of the chapters or any article, section, subdivision, sentence, clause, or phrase of any one of the chapters is for any reason held void, invalid, or unconstitutional, the decision shall not affect the validity of the other chapter or any of its articles, sections, subdivisions, sentences, clauses, or phrases.

SEC. 14. Section 61901 of the Food and Agricultural Code is amended to read:

61901. All money received by the director pursuant to this chapter shall be paid monthly into the State Treasury to the credit of the Department of Food and Agriculture Fund. Funds which are so collected may only be used to defray expenses in connection with the administration of this chapter, Chapter 1 (commencing with Section 61301), and Chapter 2.5 (commencing with Section 62500).

SEC. 15. Section 62186.1 of the Food and Agricultural Code is amended to read:

62186.1. (a) The director may bring an action against a surety bond company if the company fails to do any of the following:

(1) Acknowledge promptly and act reasonably upon receiving a bond demand from the director.

(2) Promptly investigate and process claims.

(3) Make fair and equitable settlement of claims.

(4) Pay the bond amount to the director.

(b) The authority provided in subdivision (a) is in addition to the authority provided for in subdivision (h) of Section 790.03 of the

Insurance Code.

(c) In addition to the bond proceeds, the surety bond company may be ordered to pay interest at the prevailing prime rate on the amounts owed from the date the claim was filed, all the department's court costs, and reasonable attorney's fees.

SEC. 16. Section 62191 of the Food and Agricultural Code is amended to read:

62191. (a) Except as otherwise provided in Section 62193 or 62194, the purchase of any market milk in excess of 1,000 gallons monthly from any producer, unless a written contract, which complies with all of the requirements which are prescribed by this section, has been entered into with the producer, is an unlawful trade practice.

(b) The contract shall include all of the following:

(1) The amount of market milk which is to be purchased for any period.

(2) The minimum quantity of the market milk which is to be paid for as class 1, if any is to be purchased for this purpose. The quantity shall be stated in pounds of market milk, pounds of market milk fat, or gallons of market milk, unless the price which is to be paid for the class 1 market milk is established separately for the market milk fat and market skim milk, in which case the quantity may, in the alternative, be stated in both pounds of market milk fat and pounds of market skim milk separately. The minimum quantity of market milk to be paid for as class 1 shall not be less than 70 percent of the total quantity provided in the contract to be purchased at a milk products plant, and not less than 60 percent of the total quantity of market milk fat, or the total quantity of market skim milk components, but not necessarily both, provided in the contract to be purchased at a country plant, as defined by the director in stabilization and marketing plans.

(3) The price to be paid for all market milk received.

(4) The date and method of payment for the market milk. Payment shall be made for approximately one-half of the market milk delivered in any calendar month not later than the first day of the next following month and the remainder not later than the 15th day of that month unless the milk is subject to a pooling plan as authorized in Chapter 3 (commencing with Section 62700) and the pooling plan provides for different dates and methods of payment, in which case the date and method of payment for the milk shall be as provided for in the pooling plan.

(5) The charges for transportation if hauled by the handler.

(6) A provision that market milk received within the total quantity provided by the contract to be purchased for any period shall not be paid for at less than the minimum price for market milk used for class 2.

(c) The contract may contain other provisions that are not in conflict with this chapter. A signed copy of the contract shall be filed by the producer with the director within five days from the date of

its execution.

(d) Paragraphs (2) and (6) of subdivision (b) shall not be applicable if an equalization pool, as provided for pursuant to Chapter 3 (commencing with Section 62700), is in effect for the area in which the purchase of the market milk occurs.

SEC. 17. Section 62193 of the Food and Agricultural Code is amended to read:

62193. Section 62191 does not apply to the purchase of market milk which is necessary to meet an unanticipated increase in demand or an unanticipated shortage in the supply of a handler if both of the following occur:

(a) The quantity of market milk purchased from any one producer does not exceed 5,000 gallons in any one month. However, if the producer is a cooperative association acting as a producer, the total quantity purchased shall not exceed 30,000 gallons per month.

(b) A complete record of all of these purchases is kept by the handler, and the price paid for the milk by the handler is not less than the price which is established in the applicable stabilization and marketing plan for the usage to which the milk is applied.

SEC. 18. Section 62195 of the Food and Agricultural Code is amended to read:

62195. The payment by a handler to any producer, including any nonprofit cooperative association acting as a producer, or the receipt from a handler by a producer, including any nonprofit cooperative association acting as a producer, of a lesser price for any market milk distributed to any person, including any agency of federal, state, or local government, for less than the minimum prices established by the director to be paid by handlers to producers for market milk for the marketing area is an unlawful trade practice.

SEC. 19. Section 62198 of the Food and Agricultural Code is amended to read:

62198. Any contract between a producer and handler is voidable by the producer for a 45-day period following the occurrence of either of the following events:

(a) The handler has failed to pay the producer the full price specified in the contract or has failed to comply with the terms specified in paragraph (4) of subdivision (b) of Section 62191, and the failure has not been corrected by the handler within one business day after notification by the producer or director. The 45-day period shall commence on the day after the payment was due.

(b) The handler has failed on three separate occasions within a 12-month period to pay the producer the full price specified in the contract or has failed to comply with the terms specified in paragraph (4) of subdivision (b) of Section 62191. The 45-day period shall commence on the day after the third occurrence.

SEC. 20. Section 62199 of the Food and Agricultural Code is amended to read:

62199. If a notice has been issued by the director that the future deliveries to the handler will not be covered under the Milk

Producers Security Trust Fund created pursuant to Chapter 2.5 (commencing with Section 62500), all contracts between producers and the handler are voidable by the producers. Producers shall have the option to void their contracts for a 45-day period from the date the notice is issued or until the date the director establishes for reinstatement of the handler's eligibility under the trust fund, whichever is later.

SEC. 21. Section 62200 of the Food and Agricultural Code is amended to read:

62200. (a) Handlers shall pay producers either by check or cash. Handlers electing to pay producers by cash shall, in all cases, obtain a dated, signed receipt from each producer. The receipts shall be made a part of the permanent records of the handler. Handlers paying by check shall issue checks which are reduceable to cash by the producer in no more than one business day.

(b) The giving of a promissory note is not payment within the meaning of this chapter.

SEC. 22. Section 62201 of the Food and Agricultural Code is amended to read:

62201. If a handler fails to pay for market milk delivered to him or her at the time and in the manner specified in the contract, the handler shall pay the producer interest on the unpaid amount from the time the payment was due until paid at the rate of 12 percent per annum. This interest is in addition to any other penalties provided for in this chapter.

SEC. 23. Section 62202 of the Food and Agricultural Code is amended to read:

62202. If a handler fails to pay for market milk delivered to him or her at the time and in the manner specified in this chapter, the director may assess a penalty for each payment date that producers were not fully paid. Any penalty assessed shall be a minimum of one hundred dollars ($100) for each payment date. If the amount not properly paid is in excess of forty thousand dollars ($40,000), the penalty assessed will be five thousand dollars ($5,000) or one-fourth of 1 percent of the amount not properly paid for, whichever is less.

SEC. 24. Section 62241.5 of the Food and Agricultural Code is amended to read:

62241.5. Within 60 days of the effective date of this section, each market milk handler shall provide the director with a list of the name, address, and date of every current contract between the handler and market milk producer. Monthly thereafter, the handler shall report to the director the same information on all terminated, new, and amended contracts which has not been previously reported. The director may assess a one hundred dollar ($100) penalty against any market milk handler who fails to file the required report for each report not filed.

SEC. 25. Section 62501 of the Food and Agricultural Code is amended to read:

62501. It is hereby declared that the dairy industry is a paramount

agricultural industry of the state, and the normal processes of producing and marketing milk are enterprises of vast economic importance to the state and of vital importance to the consuming public which should be safeguarded and protected in the public interest. The Legislature finds that the marketing of milk requires producers to receive prompt payment. It is the policy of this state to protect producers against loss of payment for bulk milk. The public interest requires the establishment of a system to provide payment security for producers.

SEC. 26. Section 62504 of the Food and Agricultural Code is amended to read:

62504. Chapter 1 (commencing with Section 61301), Chapter 2 (commencing with Section 61801), and Chapter 3 (commencing with Section 62700) shall be liberally construed as being complementary of, and supplemental to, this chapter, and these chapters shall constitute a single comprehensive scheme for the regulation of the production and handling of milk. However, each of the chapters, and each article, section, subdivision, sentence, clause, and phrase of each chapter is severable.

If one of the chapters or any article, section, subdivision, sentence, clause, or phrase of any one of the chapters is for any reason held void, invalid, or unconstitutional, the decision shall not affect the validity of any other chapter or any of its articles, sections, subdivisions, sentences, clauses, or phrases.

SEC. 27. Section 62508 is added to the Food and Agricultural Code, to read:

62508. This chapter shall be known and may be cited as the Norman S. Waters-Ruben S. Ayala Milk Producers' Security Act of 1987.

SEC. 28. Section 62560 of the Food and Agricultural Code is amended to read:

62560. Within 90 days after the effective date of this chapter, the director shall commence collection of the security charges provided for in Section 62561. The security charges shall be collected until the director determines that the amount of the security charges deposited to the fund approximates 110 percent of the dollar amount of the total purchases of milk of all classes then currently being paid for and received in one month by the handler with the largest payment obligation to producers for that month. When the fund reaches the maximum provided for in this section, the director shall discontinue collection of the security charges except for the purpose of replacing periodically any withdrawals from the fund in order that the maximum amount of the fund, as provided in this section, is maintained.

SEC. 29. Section 62561 of the Food and Agricultural Code is amended to read:

62561. (a) The following security charges shall be in effect for any period for which the director has implemented collections under this chapter:

(1) (A) Five and seven-tenths mills per pound ($0.0057) for class 1 fat.

(B) Two and three-tenths mills per pound ($0.0023) for class 1 solid-not-fat.

(C) One-tenth mill per pound ($0.0001) for class 1 fluid.

(2) (A) Seven and one-tenth mills per pound ($0.0071) for classes 2 and 3 fat.

(B) Two and nine-tenths mills per pound ($0.0029) for classes 2 and 3 solids-not-fat.

(b) The director shall add the security charges to the prices established for class 1, class 2, and class 3 milk established pursuant to Chapter 2 (commencing with Section 61801).

SEC. 30. Section 62563 of the Food and Agricultural Code is amended to read:

62563. Any handler subject to any pooling plan in effect under Chapter 3 (commencing with Section 62700) shall continue to be obligated for the minimum prices provided for in the stabilization and marketing plans on the pooled usage of the handler. However, any part of the minimum prices which are attributable to the security charges established pursuant to Section 62561 shall be deducted before producer prices are determined under the pooling plan.

Any handler subject to the pooling plan that receives milk which is not included in the calculation of producer prices determined under the pooling plan shall be obligated to pay the security charges established pursuant to Section 62561 for any portion of that milk which is assigned to class 1, class 2, and class 3 usage.

The amount of any handler's obligation attributable to the security charges established pursuant to Section 62561 shall be remitted by the director to the fund by the end of the month following the month the pool calculations were completed.

SEC. 31. Section 62564 of the Food and Agricultural Code is amended to read:

62564. Any handler receiving milk not subject to any pooling plan in effect pursuant to Chapter 3 (commencing with Section 62700) shall be obligated to remit to the director any security charges in effect pursuant to Section 62561 for class 1, class 2, and class 3 products produced from the milk and may deduct the security charges from the minimum prices required to be paid to producers.

SEC. 32. Section 62564.5 of the Food and Agricultural Code is amended to read:

62564.5. Any producer-handler who has milk production that is exempt pursuant to Section 62708, 62708.1, 62708.5, or 62722 from the pooling plan in effect pursuant to Chapter 3 (commencing with Section 62700) shall be exempt from any security charges established pursuant to this article for that exempt production.

SEC. 33. Section 62568 of the Food and Agricultural Code is amended to read:

62568. The director may take all appropriate action against any person to recover any unpaid amounts. In any action, a declaration

by the director which states the amount required to be paid, including penalty, is prima facie evidence of the delinquency. The presumption established by this section is a presumption affecting the burden of proof.

SEC. 34. Section 62570 of the Food and Agricultural Code is amended to read:

62570. All fund activities shall be subject to an audit at least once every two years by an auditing firm recommended by the board and selected by the director. A copy of the audit shall be delivered to the director within 30 days after completion.

SEC. 35. Section 62571 of the Food and Agricultural Code is repealed.

SEC. 36. Section 62571 is added to the Food and Agricultural Code, to read:

62571. Notwithstanding Section 13340 of the Government Code, any money which is collected by the director pursuant to this chapter is hereby continuously appropriated to the director to carry out only those purposes provided for in Section 62569. The appropriation which is made in this section is exempt from Section 16304 of the Government Code.

SEC. 37. Section 62580 of the Food and Agricultural Code is amended to read:

62580. Except as otherwise provided in this chapter, milk shipped by a producer to a handler which meets the following criteria shall be considered for coverage pursuant to this chapter:

(a) Milk shipment was made after December 31, 1986.

(b) A valid contract between the producer and handler pursuant to Chapter 1 (commencing with Section 61310) or Chapter 2 (commencing with Section 61801) has been filed with the director prior to the date the milk was shipped, unless the shipment was made in the first five days after the contract was executed. This requirement shall not apply to all shipments made prior to the effective date of this chapter.

(c) The handler was licensed and bonded as required by Chapter 1 (commencing with Section 61301) or Chapter 2 (commencing with Section 61801) when the contract was filed with the director.

(d) The milk was produced within the state and delivered to a plant within the state.

(e) The director has not issued a prior notice that the shipments would not be covered by the fund.

(f) The shipment was not made under a custom processing arrangement with the producer retaining title.

(g) The producer or cooperative shipping the milk had a direct contract with the handler. In the case of a cooperative, only the milk of its members shipped under the contract is covered. Milk shipped to a handler under a contract held by intermediaries, brokers, or agents is not covered.

(h) The producer does not have a beneficial ownership interest in the handler to whom shipments were made.

(i) The producer is in compliance with this chapter, Chapter 1 (commencing with Section 61301), Chapter 2 (commencing with Section 61801), and Chapter 3 (commencing with Section 62700).

SEC. 38. Section 62581 of the Food and Agricultural Code is amended to read:

62581. Only shipments which occur during the first 30 days from the date of the earliest shipment for which a producer has not been paid are eligible.

SEC. 39. Section 62585 of the Food and Agricultural Code is amended to read:

62585. If the director issues a notice pursuant to Section 62582, the director may again qualify shipments to the handler if any of the following occur:

(a) The handler has corrected the deficiency upon which the notice was originally issued and has done all of the following:

(1) Paid all amounts owed to producers, including interest, provided for in Chapter 1 (commencing with Section 61301) or Chapter 2 (commencing with Section 61801). Producers are not entitled to receive interest on amounts for which they have been paid by the fund after the date of payment by the fund.

(2) Reimbursed the fund for any payments made by the fund due to a default by the handler plus interest at the rate of 12 percent per annum from the date of payment by the fund.

(3) Paid any amount owed to the pool equalization fund.

(4) Paid any assessments, penalties, or other amounts owed under federal, state, or local laws.

(b) Four years have elapsed since the date of the default in payment.

SEC. 40. Section 62603 of the Food and Agricultural Code is amended to read:

62603. If the director determines that a payment default has occurred, the director shall notify the handler that it has one business day from receipt of the notification to correct the payment deficiency. If the director determines that a payment default has not occurred, the director shall so notify the handler and complaining party.

SEC. 41. Section 62604 of the Food and Agricultural Code is amended to read:

62604. When a payment default has occurred, which was not corrected within one business day after notification, the director shall issue a notice pursuant to Section 62582 which identifies the defaulting handler and informs producers of the provisions of Sections 62583 and 62584. The notice shall also inform producers of their rights to file claims pursuant to Article 7 (commencing with Section 62620).

SEC. 42. Section 62623 of the Food and Agricultural Code is amended to read:

62623. For purposes of this chapter, the amounts owed to the producers shall be calculated as follows:

(a) Only shipments which occur during the first 30 days from the date of the earliest shipment for which a producer has not been paid shall be used.

(b) The minimum prices established in the stabilization and marketing plans applied to the usage assigned under the pooling plan shall be used for cooperative marketing associations.

(c) The price specified in the contract with the handler shall be used for manufacturing milk producers unless a lower price is contained in the stabilization and marketing plans, in which case the lower price shall be used.

(d) The minimum prices established in the stabilization and marketing plans shall be used for direct market milk producers who are not shipping their milk under the pooling plan.

(e) The quota, base, and overbase prices, as provided for in the pooling plan, shall be used for producers, other than cooperative marketing associations, who ship their milk directly to a handler.

(f) Deductions shall be made for those items which the handler customarily deducts from the payments, unless the deductions are in violation of Chapter 1 (commencing with Section 61301), Chapter 2 (commencing with Section 61801), or Chapter 3 (commencing with Section 62700), or the deductions are for voluntary assignments made by the producer.

(g) The producer's share of any bond recovery under Chapter 1 (commencing with Section 61301) or Chapter 2 (commencing with Section 61801) shall be deducted.

SEC. 43. Section 62640 of the Food and Agricultural Code is amended to read:

62640. If a handler defaults in payments to the pool equalization fund provided for in Chapter 3 (commencing with Section 62700) and the director determines that additional efforts will not result in collection of the amount due, the director, after consultation with the board, may pay money from the Milk Producers Security Trust Fund to the pool equalization fund to cover the amount of the default.

SEC. 44. Section 62641 is added to the Food and Agricultural Code, to read:

62641. No payment shall be made from the Milk Producers Security Trust Fund to the pool equalization fund for unpaid amounts which were owed for milk handled prior to January 1, 1987.

SEC. 45. Section 62662 of the Food and Agricultural Code is amended to read:

62662. The director may exercise any or all of the powers conferred by Chapter 2 (commencing with Section 11150) of Division 3 of Title 2 of the Government Code upon the head of a department with respect to hearings and investigations under this chapter.

SEC. 46. Section 62664 of the Food and Agricultural Code is repealed.

SEC. 47. Section 62665 of the Food and Agricultural Code is amended to read:

62665. Any order of the director made pursuant to this chapter which substantially affects the rights of any directly affected party shall be subject to judicial review upon petition to the appropriate court. The petition shall be filed within 30 days after the effective date of the order.

SEC. 48. Section 62667 of the Food and Agricultural Code is amended to read:

62667. Any payments made to producers from the fund due to a handler's default shall accrue interest at the rate of 12 percent per annum from the date of payment. The payments and accrued interest is a judgment against the defaulting handler. The judgment shall be considered a lien on all real and personal property of the defaulting handler. The director may file the lien for record with any county recorder where a defaulting handler's property is located and shall specify the amount owed, the name of the handler, the federal social security number or the federal employer tax number if known, and the last known address of the handler. The lien shall remain in full force and effect until the handler has repaid to the fund an amount equal to the default.

SEC. 49. 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 Milk Producers Security Trust Fund be created and protection to dairy producers be enacted to protect the dairy industry and the public from the catastrophic effects resulting from the closure of milk processing plants, including the nonpayment of producers for their milk production and the interruption of adequate supplies of milk and milk products to the consuming public, as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1075

An act to add and repeal Section 1660.8 of the Vehicle Code, and to amend Section 4 of Chapter 1306 of the Statutes of 1985, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. 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 only for purposes of evaluating first offender programs; for purposes of educational programs relating to alcohol, drug, or other substance abuse; and for the administration of the

fund, and may be expended only upon appropriation of the Legislature.

This section shall remain in effect only until July 1, 1988, and as of that date is repealed. Any moneys remaining in the fund and unencumbered at that time shall be transferred to the General Fund.

SEC. 2. Section 4 of Chapter 1306 of the Statutes of 1985 is amended to read:

Sec. 4. The Superintendent of Public Instruction shall conduct a four-year pilot program that has been developed pursuant to Section 3, from July 1, 1985, to June 30, 1989, in selected regions of the state, as determined by the State Department of Education based on the "positive role model" concept.

The department shall contract with a qualified nonprofit organization to conduct the project and shall award the contract through a competitive request for proposals process. The department shall require nonprofit organizations to demonstrate that they are capable of providing matching or in-kind funds equivalent to at least 25 percent of the contract amount.

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 extend the funding for the pilot program on substance abuse prior to the expiration of the program, it is necessary for this act to take effect immediately.

CHAPTER 1076

An act to amend Section 3496 of the Civil Code, to amend Sections 11571, 11572, and 11581 of the Health and Safety Code, and to amend Sections 11201 and 11226 of the Penal Code, relating to nuisances.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 3496 of the Civil Code is amended to read:

3496. In any of the following described cases, the court may award costs, including the costs of investigation and discovery, and reasonable attorneys' fees, which are not compensated for pursuant to some other provision of law, to the prevailing party:

(a) In any case in which a governmental agency seeks to enjoin the sale, distribution, or public exhibition, for commercial consideration, of obscene matter, as defined in Section 311 of the Penal Code.

(b) In any case in which a governmental agency seeks to enjoin the use of a building or place for the purpose of illegal gambling,

lewdness, assignation, or prostitution; or any case in which a governmental agency seeks to enjoin acts of illegal gambling, lewdness, assignation, or prostitution in or upon a building or place, as authorized in Article 2 (commencing with Section 11225) of Chapter 3 of Title 1 of Part 4 of the Penal Code.

(c) In any case in which a governmental agency seeks to enjoin the use of a building or place, or seeks to enjoin in or upon any building or place the unlawful sale, manufacture, service, storage, or keeping or giving away of any controlled substance, as authorized in Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code.

(d) In any case in which a governmental agency seeks to enjoin the unlawful sale, service, storage, or keeping or giving away of alcoholic liquor, as authorized in Article 1 (commencing with Section 11200) of Chapter 3 of Title 1 of Part 4 of the Penal Code.

SEC. 2. Section 11571 of the Health and Safety Code is amended to read:

11571. Whenever there is reason to believe that such a nuisance is kept, maintained or exists in any county, the district attorney of the county, in the name of the people, may, or the city attorney of any incorporated city, or any citizen of the state resident in the county, in his or her own name, may, maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting the nuisance.

SEC. 3. Section 11572 of the Health and Safety Code is amended to read:

11572. Unless filed by the district attorney, or the city attorney of an incorporated city, the complaint in the action shall be verified.

SEC. 4. Section 11581 of the Health and Safety Code is amended to read:

11581. (a) If the existence of the nuisance is established in the action, an order of abatement shall be entered as a part of the judgment, which order shall direct the removal from the building or place of all fixtures, musical instruments, and other movable property used in conducting, maintaining, aiding, or abetting the nuisance and shall direct their sale in the manner provided for the sale of chattels under execution.

(b) The order shall provide for the effectual closing of the building or place against its use for any purpose, and for keeping it closed for a period of one year. This subdivision is intended to give priority to closure. Any alternative to closure may be considered only as provided in this section.

In addition, the court may assess a civil penalty not to exceed twenty-five thousand dollars ($25,000) against any or all of the defendants, based upon the severity of the nuisance and its duration.

(c) (1) If the court finds that any vacancy resulting from closure of the building or place may create a nuisance or that closure is

otherwise harmful to the community, in lieu of ordering the building or place closed, the court may order the person who is responsible for the existence of the nuisance, or the person who knowingly permits controlled substances to be unlawfully sold, served, stored, kept, or given away in or from a building or place he or she owns, to pay damages in an amount equal to the fair market rental value of the building or place for one year to the city or county in whose jurisdiction the nuisance is located for the purpose of carrying out their drug prevention and education programs. If awarded to a city, eligible programs may include those developed as a result of cooperative programs among schools, community agencies, and the local law enforcement agency. If awarded to a county, funds shall be used for those programs that are part of the drug program plan, as specified in Section 11983.2. These funds shall not be used to supplant existing city, county, state, or federal resources used for drug prevention and education programs.

(2) For purposes of this subdivision, the actual amount of rent being received for the rental of the building or place, or the existence of any vacancy therein, may be considered, but shall not be the sole determinant of the fair market rental value. Expert testimony may be used to determine the fair market rental value.

SEC. 5. Section 11201 of the Penal Code is amended to read:

11201. Whenever there is reason to believe that a nuisance as defined in this article is kept, maintained or exists in any county, the district attorney, in the name of the people of the State of California, shall, or the city attorney of an incorporated city, or any citizen of the state resident within the county, in his or her own name may, maintain an action in equity to abate and prevent the nuisance and to perpetually enjoin the person or persons conducting or maintaining it, and the owner, lessee or agent of the building, or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting it.

The complaint in the action shall be verified unless filed by the district attorney.

SEC. 6. Section 11226 of the Penal Code is amended to read:

11226. Whenever there is reason to believe that a nuisance as defined in this article is kept, maintained or is in existence in any county, the district attorney, in the name of the people of the State of California, shall, or the city attorney of an incorporated city, or any citizen of the state resident within the county, in his or her own name may, maintain an action in equity to abate and prevent the nuisance and to perpetually enjoin the person conducting or maintaining it, and the owner, lessee or agent of the building, or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting it.

The complaint in the action shall be verified unless filed by the district attorney or the city attorney.

CHAPTER 1077

An act to amend Section 18056.2 of the Health and Safety Code, relating to continuing education.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987]

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

SECTION 1. Section 18056.2 of the Health and Safety Code is amended to read:

18056.2. (a) Any person licensed as a dealer or salesperson to sell manufactured homes or mobilehomes shall have completed approved educational courses, seminars, or conferences, or their equivalent, during the period preceding license renewal on the following basis:

(1) For the first license renewal period subsequent to issuance of the license: 24 hours.

(2) For the second license renewal period subsequent to issuance of the license: 12 hours.

(3) For the third and subsequent license renewal periods subsequent to the issuances of the license: six hours.

(b) The regulations shall prescribe all of the following:

(1) A basis and method of qualifying educational programs, including course content and topic requirements, and instructors, the certification of attendance at which, or challenging the course of which, will satisfy the requirements of this article.

(2) A procedure for evaluation of petitions based on a claim of equivalency with the requirements of subdivision (a), and a reasonable standard by which activity would be judged equivalent, including, but not limited to, instruction in manufactured housing educational programs, law, manufactured housing technical programs, or research.

(3) A system of control and reporting qualifying attendance.

(4) A statement of the conditions of exemption from the continuing education requirements established under this article, as well as a method of applying and qualifying for the exemption, for reason of health, military service, or other compelling cause.

(5) Criteria for the content, availability, and procedures for no less than six hours of preliminary education courses or programs which shall be attended and successfully concluded by applicants for new dealers' or salespersons' licenses before the applicants take the licensing examinations.

(c) In exercising the authority under this article, the department shall establish standards which will assure reasonable currency of knowledge as a basis for a level of manufactured housing practice which will provide a high level of consumer protection and service. The standards shall include, where qualified, generally accredited

educational institutions, private vocational schools, correspondence institutions, educational programs and seminars of professional societies and organizations, other organized educational programs or technical subjects, or equivalent offerings.

CHAPTER 1078

An act to amend Section 50669 of the Health and Safety Code, relating to housing, and making an appropriation therefor.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 50669 of the Health and Safety Code is amended to read:

50669. As used in Section 50670:

(a) "Deferred-payment loan" means a loan for acquisition and rehabilitation of a rental housing development which (1) has a term of not more than 30 years, but which shall not in any event exceed the useful life of the rental housing development for which such loan is made, as determined by the department, whichever is less, and (2) is repaid in a single payment upon refinancing of such development at the end of the term of the loan. Such loans shall bear interest at the rate of 3 percent per annum on the unpaid principal balance, provided however, that the department may reduce or eliminate interest payments on a loan for any year or alternatively defer interest payments until the deferred-payment loan is repaid, if in the exercise of sound discretion, the department determines such action is necessary to provide affordable rents to households of very low and low income.

(b) "Rental housing development" means a residential structure or structures containing five or more rental dwelling units for the elderly or handicapped, provided that each unit is equipped with a kitchen and bathroom, or a structure or structures intended for use as a group home by five or more handicapped individuals or a residential hotel for any low or very low income household. "Residential hotel" shall have the same meaning as used in paragraph (1) of subdivision (b) of Section 50519 but, for purposes of this subdivision, there shall be an additional requirement that a majority of the guestrooms in the hotel be residential hotel units. A "residential hotel unit" means a room used or intended to be used as a primary residential unit by a person or persons, which is subject to Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code, but which does not have either a self-containing kitchen or bathroom, or both. "Rental housing development" also means a residential structure or structures in

operation or previously operated as a motel and subject to subdivision (b) of Section 1940 of the Civil Code, which will contain five or more dwelling units for any low or very low income households. Eligible rehabilitation costs relative to motels may include costs associated with adding self-containing kitchens and bathrooms in each unit.

(c) "Sponsor" means any individual, joint venture, partnership, limited partnership, trust, corporation, cooperative, local public entity, duly constituted governing body of an Indian reservation or rancheria, or other legal entity, or any combination thereof, certified by the department as qualified to own, manage, and rehabilitate a rental housing development. A sponsor may be organized for profit or limited profit or be nonprofit.

CHAPTER 1079

An act to amend Section 25534 of, and to add Sections 25534.1 and 25534.2 to, the Public Resources Code, relating to energy resources.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 25534 of the Public Resources Code is amended to read:

25534. (a) The commission may, after hearings, amend the conditions of, or revoke the certification for, any facility for any of the following reasons:

(1) Any material false statement set forth in the application, presented in proceedings of the commission, or included in supplemental documentation provided by the applicant.

(2) Any significant failure to comply with the terms or conditions of approval of the application, as specified by the commission in its written decision.

(3) A violation of this division or any regulation or order issued by the commission under this division.

(b) The commission may also administratively impose a civil penalty for a violation of paragraph (1) or (2) of subdivision (a). Any civil penalty shall be imposed in accordance with Section 25534.1 and may not exceed fifty thousand dollars ($50,000) per violation, except that the civil penalty may be increased by an amount not exceeding one thousand dollars ($1,000) per day for each day in which the violation occurs or persists, but the total of the per day penalties shall not exceed twenty-five thousand dollars ($25,000).

SEC. 2. Section 25534.1 is added to the Public Resources Code, to read:

25534.1. (a) The executive director of the commission may issue

a complaint to any person or entity on whom an administrative civil penalty may be imposed pursuant to Section 25534. The complaint shall allege the act or failure to act for which the civil penalty is proposed, the provision of law authorizing civil liability, and the proposed civil penalty.

(b) The complaint shall be served by personal notice or certified mail, and shall inform the party so served that a hearing will be conducted within 60 days after the party has been served. The hearing shall be before the commission. The complainant may waive the right to a hearing, in which case the commission shall not conduct a hearing.

(c) After any hearing, the commission may adopt, with or without revision, the proposed decision and order of the executive director.

(d) Orders setting an administrative civil penalty shall become effective and final upon issuance thereof, and any payment shall be made within 30 days. Copies of these orders shall be served by personal service or by registered mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

(e) In determining the amount of the administrative civil penalty, the commission shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the violation is susceptible to removal or resolution, the cost to the state in pursuing the enforcement action, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary removal or resolution efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require.

SEC. 3. Section 25534.2 is added to the Public Resources Code, to read:

25534.2. (a) Within 30 days after service of an order issued under Section 25534.1, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof pursuant to Section 1094.5 of the Code of Civil Procedure. If no aggrieved party petition for a writ of mandate is filed within the time provided by this section, an order of the commission is not subject to review by any court or agency, except that the commission may grant review on its own motion of an order issued under Section 25534.1 after the expiration of the time limits set by this section.

(b) Upon request of the commission, the Attorney General shall institute an action in the appropriate superior court to collect and recover any administrative civil penalties imposed pursuant to Section 25534.1. The court shall accord priority on its calendar to any action under this subdivision.

(c) Any moneys recovered by the commission pursuant to this section shall be deposited in the General Fund.

SEC. 4. It is the intent of the Legislature, in enacting the amendments to Section 25534 of the Public Resources Code

contained in Section 1 of this act, to confer additional enforcement authority on the State Energy Resources Conservation and Development Commission and not to limit or restrict the existing authority of the commission to enter into or carry out settlement negotiations in any enforcement proceeding.

CHAPTER 1080

An act to amend Section 1717 of the Civil Code, and to amend Sections 488.080, 581, 685.095, 699.080, 706.108, 715.040, 998, 1033.5, and 1985.3 of, and to add Section 1281.7 to, the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 1717 of the Civil Code is amended to read:

1717. (a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

Where a contract provides for attorney's fees, as set forth above, that provision shall be construed as applying to the entire contract, unless each party was represented by counsel in the negotiation and execution of the contract, and the fact of that representation is specified in the contract.

Reasonable attorney's fees shall be fixed by the court, and shall be an element of the costs of suit.

Attorney's fees provided for by this section shall not be subject to waiver by the parties to any contract which is entered into after the effective date of this section. Any provision in any such contract which provides for a waiver of attorney's fees is void.

(b) (1) The court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2), the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section.

(2) Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section.

Where the defendant alleges in his or her answer that he or she

tendered to the plaintiff the full amount to which he or she was entitled, and thereupon deposits in court for the plaintiff, the amount so tendered, and the allegation is found to be true, then the defendant is deemed to be a party prevailing on the contract within the meaning of this section.

Where a deposit has been made pursuant to this section, the court shall, on the application of any party to the action, order the deposit to be invested in an insured, interest-bearing account. Interest on the amount shall be allocated to the parties in the same proportion as the original funds are allocated.

(c) In an action which seeks relief in addition to that based on a contract, if the party prevailing on the contract has damages awarded against it on causes of action not on the contract, the amounts awarded to the party prevailing on the contract under this section shall be deducted from any damages awarded in favor of the party who did not prevail on the contract. If the amount awarded under this section exceeds the amount of damages awarded the party not prevailing on the contract, the net amount shall be awarded the party prevailing on the contract and judgment may be entered in favor of the party prevailing on the contract for that net amount.

SEC. 2. Section 488.080 of the Code of Civil Procedure is amended to read:

488.080. (a) A registered process server may levy under a writ of attachment on the following types of property:

(1) Real property, pursuant to Section 488.315.

(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 488.325.

(3) Personal property in the custody of a levying officer, pursuant to Section 488.355.

(4) Equipment of a going business, pursuant to Section 488.375.

(5) Motor vehicles, vessels, mobilehomes, or commercial coaches used as equipment of a going business, pursuant to Section 488.385.

(6) Farm products or inventory of a going business, pursuant to Section 488.405.

(7) Personal property used as a dwelling, pursuant to subdivision (a) of Section 700.080.

(8) Deposit accounts, pursuant to Section 488.455.

(9) Property in a safe-deposit box, pursuant to Section 488.460.

(10) Accounts receivable or general intangibles, pursuant to Section 488.470.

(11) Final money judgments, pursuant to Section 488.480.

(12) Interest of a defendant in personal property in the estate of a decedent, pursuant to Section 488.485.

(b) Before levying under the writ of attachment, the registered process server shall deposit a copy of the writ with the levying officer and pay the fee provided by Section 26721 of the Government Code.

(c) If a registered process server levies on property pursuant to

subdivision (a), the registered process server shall do both of the following:

(1) Comply with the applicable levy, posting, and service provisions of Article 2 (commencing with Section 488.300).

(2) Request any third person served to give a garnishee's memorandum to the levying officer in compliance with Section 488.610 on a form provided by the registered process server.

(d) Within five days after levy under this section, all of the following shall be filed with the levying officer:

(1) The writ of attachment.

(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 attachment on other persons as required by Article 2 (commencing with Section 488.300).

(4) Instructions in writing, as required by the provisions of Section 488.030.

(e) If the fee provided by Section 26721 of the Government Code has been paid, 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. If the registered process server does not comply with subdivisions (b) and (d), the levy is ineffective and the levying officer is not required to perform any duties under the writ and may issue a release for any property sought to be attached. The levying officer is not liable for actions taken in conformance with the provisions of this title in reliance on information provided to the levying officer under subdivision (d) except to the extent that the levying officer has actual knowledge that the information is incorrect. Nothing in this subdivision limits any liability the plaintiff or registered process server may have if the levying officer acts on the basis of incorrect information provided under subdivision (d).

(f) The fee for services of a registered process server under this section shall be allowed as a recoverable cost pursuant to Section 1033.5.

SEC. 3. Section 581 of the Code of Civil Procedure is amended to read:

581. (a) As used in this section:

(1) "Action" means any civil action or special proceeding.

(2) "Complaint" means a complaint and a cross-complaint.

(3) "Court" means the court in which the action is pending.

(4) "Defendant" includes a cross-defendant.

(5) "Plaintiff" includes a cross-complainant.

(6) "Trial." A trial shall be deemed to actually commence at the beginning of the opening statement or argument of any party or his or her counsel, or if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence.

(b) An action may be dismissed in any of the following instances:

(1) With or without prejudice, upon written request of the

plaintiff to the clerk, filed with papers in the case, or by oral or written request to the court at any time before the actual commencement of trial, upon payment of the costs, if any.

(2) With or without prejudice, by any party upon the written consent of all other parties.

(3) By the court, without prejudice, when no party appears for trial following 30 days' notice of time and place of trial.

(4) By the court, without prejudice, when dismissal is made pursuant to the applicable provisions of Chapter 1.5 (commencing with Section 583.110).

(5) By the court, without prejudice, when either party fails to appear on the trial and the other party appears and asks for dismissal.

(c) A plaintiff may dismiss his or her complaint, or any cause of action asserted in it, in its entirety, or as to any defendant or defendants, with or without prejudice prior to the actual commencement of trial.

(d) Except as otherwise provided in subdivision (e), the court shall dismiss the complaint, or any cause of action asserted in it, in its entirety or as to any defendant, with prejudice, when upon the trial and before the final submission of the case, the plaintiff abandons it.

(e) After the actual commencement of trial, the court shall dismiss the complaint, or any causes of action asserted in it, in its entirety or as to any defendants, with prejudice, if the plaintiff requests a dismissal, unless all parties to the trial consent to dismissal without prejudice or by order of the court dismissing the same without prejudice on a showing of good cause.

(f) The court may dismiss the complaint as to that defendant when:

(1) Except where Section 597 applies, after a demurrer to the complaint is sustained without leave to amend and either party moves for dismissal.

(2) Except where Section 597 applies, after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal.

(3) After a motion to strike the whole of a complaint is granted without leave to amend and either party moves for dismissal.

(4) After a motion to strike the whole of a complaint or portion thereof is granted with leave to amend the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal.

(g) The court may dismiss without prejudice the complaint in whole, or as to that defendant, when dismissal is made under the applicable provisions of Chapter 1.5 (commencing with Section 583.110).

(h) No dismissal of an action may be made or entered, or both, under paragraph (1) of subdivision (b) where affirmative relief has been sought by the cross-complaint of a defendant or if there is a

motion pending for an order transferring the action to another court under the provisions of Section 396b.

(i) No dismissal may be made or entered, or both, under paragraph (1) or (2) of subdivision (b) except upon the written consent of the attorney for the party or parties applying therefor, or if consent of the attorney is not obtained, upon order of dismissal by the court after notice to the attorney.

(j) No action may be dismissed which has been determined to be a class action under the provisions of this code unless and until notice that the court deems adequate has been given and the court orders the dismissal.

(k) The court may dismiss, without prejudice, the complaint in whole, or as to that defendant when either party fails to appear at the trial and the other party appears and asks for the dismissal.

SEC. 4. Section 685.095 of the Code of Civil Procedure is amended to read:

685.095. When a writ is served by a levying officer or registered process server, the costs for that service, as determined pursuant to Section 1033.5, shall be added to and become part of the judgment.

SEC. 5. Section 699.080 of the Code of Civil Procedure is amended 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.

(6) Property in a safe-deposit box, pursuant to Section 700.150.

(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) Before levying under the writ of execution, the registered process server shall deposit a copy of the writ with the levying officer and pay the fee provided by Section 26721 of the Government Code.

(c) If a registered process server levies on property pursuant to subdivision (a), the registered process server shall do both of the following:

(1) Comply with the applicable levy, posting, and service provisions of Article 4 (commencing with Section 700.010).

(2) Request any third person served to give a garnishee's memorandum to the levying officer in compliance with Section

701.030 on a form provided by the registered process server.

(d) 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.

(e) If the fee provided by Section 26721 of the Government Code has been paid, 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. If the registered process server does not comply with subdivisions (b) and (d), the levy is ineffective and the levying officer is not required to perform any duties under the writ and may issue a release for any property sought to be levied upon.

(f) The fee for services of a registered process server under this section shall be allowed as a recoverable cost pursuant to Section 1033.5.

SEC. 6. Section 706.108 of the Code of Civil Procedure is amended to read:

706.108. (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 deliver an application for issuance of an earnings withholding order to a registered process server who may then issue an earnings withholding order.

(b) If the registered process server has issued the earnings withholding order, the registered process server, before serving the earnings withholding order, shall deposit with the levying officer a copy of the writ of execution, the application for issuance of an earnings withholding order, and a copy of the earnings withholding order, and shall pay the fee provided by Section 26750 of the Government Code.

(c) A registered process server may serve an earnings withholding order on an employer whether the earnings withholding order was issued by a levying officer or by a registered process server, but no earnings withholding order may be served after the time specified in subdivision (b) of Section 699.530. In performing this function, the registered process server 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.

(4) A copy of the employer's instructions referred to in Section 706.127, except as otherwise prescribed in rules adopted by the

Judicial Council.

(d) Within five days after service under this section, all of the following shall be filed with the levying officer:

(1) The writ of execution, if it is not already in the hands of the levying officer.

(2) Proof of service on the employer of the papers listed in subdivision (c).

(3) Instructions in writing, as required by the provisions of Section 687.010.

(e) If the fee provided by Section 26750 of the Government Code has been paid, the levying officer shall perform all other duties required by this chapter as if the levying officer had served the earnings withholding order. If the registered process server does not comply with subdivisions (b), where applicable, and (d), the service of the earnings withholding order is ineffective and the levying officer is not required to perform any duties under the order and may terminate the order and may release any withheld earnings to the judgment debtor.

(f) 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 is governed by Section 1033.5 but may not exceed one dollar and fifty cents ($1.50).

SEC. 7. Section 715.040 of the Code of Civil Procedure is amended 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. If the writ is not executed within that time, the levying officer shall upon request give the writ to the judgment creditor or to a registered process server designated by the judgment creditor.

(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) If the writ is executed by a registered process server, 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 1033.5.

SEC. 8. Section 998 of the Code of Civil Procedure is amended to read:

998. (a) The costs allowed under Sections 1031 and 1032 shall be withheld or augmented as provided in this section.

(b) Not less than 10 days prior to commencement of trial, any party may serve an offer in writing upon any other party to the action to allow judgment to be taken in accordance with the terms and conditions stated at that time.

(1) If the offer is accepted, the offer with proof of acceptance shall be filed and the clerk or the judge shall enter judgment accordingly.

(2) If the offer is not accepted prior to trial or within 30 days after it is made, whichever occurs first, it shall be deemed withdrawn, and cannot be given in evidence upon the trial.

(3) For purposes of this subdivision, a trial shall be deemed to be actually commenced at the beginning of the opening statement of the plaintiff or counsel, and if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence.

(c) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment, the plaintiff shall not recover his or her costs and shall pay the defendant's costs from the time of the offer. In addition, in any action or proceeding other than an eminent domain action, the court, in its discretion, may require the plaintiff to pay the defendant's costs from the date of filing of the complaint and a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, the preparation or trial of the case by the defendant.

(d) If an offer made by a plaintiff is not accepted and the defendant fails to obtain a more favorable judgment, the court in its discretion may require the defendant to pay a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, the preparation or trial of the case by the plaintiff, in addition to plaintiff's costs.

(e) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment, the costs under this section shall be deducted from any damages awarded in favor of the plaintiff. If the costs awarded under this section exceed the amount of the damages awarded to the plaintiff the net amount shall be awarded to the defendant and judgment shall be entered accordingly.

(f) Police officers shall be deemed to be expert witnesses for the purposes of this section; plaintiff includes a cross-complainant and defendant includes a cross-defendant. Any judgment entered pursuant to this section shall be deemed to be a compromise settlement.

(g) This chapter does not apply to an offer which is made by a

plaintiff in an eminent domain action.

(h) The costs for services of expert witnesses for trial under subdivisions (c) and (d) shall not exceed those specified in Section 68092.5 of the Government Code.

SEC. 8.5. Section 1033.5 of the Code of Civil Procedure is amended to read:

1033.5. (a) The following items are allowable as costs under Section 1032:

(1) Filing, motion, and jury fees.

(2) Juror food and lodging while they are kept together during trial and after the jury retires for deliberation.

(3) Taking, videotaping, and transcribing necessary depositions including an original and one copy of those taken by the claimant and one copy of depositions taken by the party against whom costs are allowed, and travel expenses to attend depositions.

(4) Service of process by a public officer, registered process server, or other means, as follows:

(A) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.

(B) If service is by a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, the recoverable cost is the amount actually incurred in effecting service, including, but not limited to, a stake out or other means employed in locating the person to be served, unless such charges are successfully challenged by a party to the action.

(C) When service is by publication, the recoverable cost is the sum actually incurred in effecting service.

(D) When service is by a means other than that set forth in subparagraph (A), (B) or (C), the recoverable cost is the lesser of the sum actually incurred, or the amount allowed to a public officer in this state for such service, except that the court may allow the sum actually incurred in effecting service upon application pursuant to paragraph (4) of subdivision (c).

(5) Expenses of attachment including keeper's fees.

(6) Premiums on necessary surety bonds.

(7) Ordinary witness fees pursuant to Section 68093 of the Government Code.

(8) Fees of expert witnesses ordered by the court.

(9) Transcripts of court proceedings ordered by the court.

(10) Attorney fees authorized by statute.

(11) Court reporters fees as established by statute.

(12) Models and blowups of exhibits and photocopies of exhibits may be allowed if they were reasonably helpful to aid the trier of fact.

(13) Any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal.

(b) The following items are not allowable as costs, except when expressly authorized by law:

(1) Fees of experts not ordered by the court.

(2) Investigation expenses in preparing the case for trial.

(3) Postage, telephone, and photocopying charges, except for exhibits.

(4) Costs in investigation of jurors or in preparation for voir dire.

(5) Transcripts of court proceedings not ordered by the court.

(c) Any award of costs shall be subject to the following:

(1) Costs are allowable if incurred, whether or not paid.

(2) Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.

(3) Allowable costs shall be reasonable in amount.

(4) Items not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion.

(5) When any statute of this state refers to the award of "costs and attorney's fees," attorney's fees are an item and component of the costs to be awarded and are within the ambit of paragraph (10) of subdivision (a). Any claim not based upon the court's established schedule of attorney's fees for actions on a contract shall bear the burden of proof. Attorney's fees may be fixed as follows: (A) upon a noticed motion, (B) at the time a statement of decision is rendered, (C) upon application supported by affidavit made concurrently with a claim for other costs, or (D) upon entry of default judgment.

SEC. 9. Section 1281.7 is added to the Code of Civil Procedure, to read:

1281.7. A petition pursuant to Section 1281.2 may be filed in lieu of filing an answer to a complaint. The petitioning defendant shall have 15 days after any denial of the petition to plead to the complaint.

SEC. 10. Section 1985.3 of the Code of Civil Procedure is amended to read:

1985.3. (a) For purposes of this section, the following definitions apply:

(1) "Personal records" means the original or any copy of books, documents, or other writings pertaining to a consumer and which are maintained by any "witness" which is a physician, pharmacist, pharmacy, hospital, state or national bank, state or federal association (as defined in Section 5102 of the Financial Code), state or federal credit union, trust company, anyone authorized by the state to make or arrange loans that are secured by real property, security brokerage firm, insurance company, underwritten title company, attorney, accountant, institution of the Farm Credit System, as specified in Section 2002 of Title 12 of the United States Code, or telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, or psychotherapist, as defined in Section 1010 of the Evidence Code, or a private or public preschool, elementary school, or secondary school.

(2) "Consumer" means any individual, partnership of five or fewer persons, association, or trust which has transacted business

with, or has used the services of, the witness or for whom the witness has acted as agent or fiduciary.

(3) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding pursuant to this code, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to the provisions of Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(b) The date specified in a subpoena duces tecum for the production of personal records shall not be less than 15 days from the date the subpoena is issued. Prior to the date called for in the subpoena duces tecum for the production of personal records, the subpoenaing party shall serve or cause to be served on the consumer whose records are being sought a copy of the subpoena duces tecum, of the affidavit supporting the issuance of the subpoena, and of the notice described in subdivision (e). This service shall be made as follows:

(1) To the consumer personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the consumer is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall do either of the following:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the consumer or by his or her attorney of record. The witness may presume that any attorney purporting to sign the authorization on behalf of the consumer acted with the consent of the consumer.

(d) A subpoena duces tecum for the production of personal records shall be served in sufficient time to allow the witness a reasonable time to locate and produce the records or copies thereof.

Except as to records subpoenaed for a criminal proceeding or

records subpoenaed during trial, a subpoena duces tecum served upon a witness with records in more than one location shall be served no less than 10 days prior to the date specified for production, unless good cause is shown pursuant to subdivision (h).

(e) Every copy of the subpoena duces tecum and affidavit served on a consumer or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) records about the consumer are being sought from the witness named on the subpoena; (2) if the consumer objects to the witness furnishing the records to the party seeking the records, the consumer must file papers with the court prior to the date specified for production on the subpoena; and (3) if the party who is seeking the records will not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the consumer's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) A subpoena duces tecum for personal records maintained by a telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, shall not be valid or effective unless it includes a consent to release, signed by the consumer whose records are requested, as required by Section 2891 of the Public Utilities Code.

(g) Any consumer whose personal records are sought by a subpoena duces tecum may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness prior to production. No witness shall be required to produce personal records after receipt of notice that such a motion has been brought, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected.

(h) Upon good cause shown and provided that the rights of witnesses and consumers are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(i) Nothing contained in this section shall be construed to apply to any subpoena duces tecum which does not request the records of any particular consumer or consumers and which requires a custodian of records to delete all information which would in any way identify any consumer whose records are to be produced.

(j) The provisions of this section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(k) Failure to comply with this section shall be sufficient basis for

the witness to refuse to produce the personal records sought by a subpoena duces tecum.

CHAPTER 1081

An act to amend Section 1305 of the Penal Code, relating to bail, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 1305 of the Penal Code is amended to read:

1305. (a) If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his or her presence in court is lawfully required, or to surrender himself or herself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and, unless within 15 court days from arraignment no complaint has been filed or the charges have been dismissed, the undertaking of bail, or the money deposited instead of bail, as the case may be, must thereupon be declared forfeited, and, if the amount of the forfeiture exceeds two hundred dollars ($200), the clerk of the court shall, promptly upon entering the fact of such failure to appear in the minutes, mail notice of the forfeiture to the surety on the bond or depositor of money instead of bond, and shall execute a certificate of such mailing and place it in the court's file in the case. If the surety is an authorized corporate surety insurer, and if the bond has plainly printed or stamped thereon the address of its principal office, such notice shall be mailed to such surety at such address, and mailing to the bail agent or solicitor who posted the bond shall not constitute compliance with this section; the clerk shall at the same time send a copy of such notice to the bail agent or solicitor who posted the bond. If the clerk fails to mail such notice within 30 days after such entry, the surety or depositor shall be released from all obligations under the bond.

But if at any time within 180 days after such entry in the minutes or, if mailing of notice of forfeiture is required, within 180 days after mailing such notice of forfeiture, the defendant appears, and satisfactorily excuse the defendant's neglect or show to the satisfaction of the court that the absence of the defendant was not with the connivance of the bail, the court shall, under terms as may be just and that are equal with respect to all forms of pretrial release, direct the forfeiture of the undertaking or the deposit to be set aside and the bail or the money deposited instead of bail exonerated immediately. The court may order the bail reinstated and the defendant released again on the same bond after notice to the bail, provided that the bail has not surrendered the defendant. If at any

time within 180 days after such entry in the minutes or mailing as the case may be, the bail should surrender the defendant to the court or to custody, the court shall under terms as may be just direct the forfeiture of the undertaking or the deposit to be set aside and the bail or the money deposited instead of bail exonerated immediately.

If within 180 days after such entry in the minutes or mailing as the case may be, it is made to appear to the satisfaction of the court that the defendant is dead or is otherwise permanently unable to appear in court due to illness, insanity, or detention by civil or military authorities, and that the absence of the defendant was not with the connivance of the bail, the court shall, under terms as may be just and that are equal with respect to all forms of pretrial release, direct the forfeiture of the undertaking or the deposit to be set aside and the bail or the money deposited instead of bail exonerated immediately. If within 180 days after such entry in the minutes or mailing as the case may be, it is made to appear to the satisfaction of the court that the defendant is temporarily disabled by reason of illness, insanity, or detention by civil or military authorities and is therefore unable to appear in court at any time during the remainder of such 180 days, and that the absence of the defendant has not been with the connivance of the bail, then the period of time during which the disability continues shall not be deemed part of such 180 days. Upon a finding by the court that a reasonable period of time is necessary in order to return the defendant to court upon the termination of the disability, then such period of time, as fixed by the court, shall not be deemed part of such 180 days.

Unless waived by the district attorney or other prosecuting attorney, no order discharging the forfeiture of the undertaking or deposit shall be made without notice by the bail to the district attorney or prosecuting attorney, who may request a hearing within 10 days after receipt of the notice. The court shall then set the date, time, and place of hearing and give notice to the district attorney or prosecuting attorney and to the bail.

(b) If, without sufficient excuse, the defendant neglects to appear for arraignment, trial, judgment, or upon any other occasion when his or her presence in court is lawfully required, or to surrender himself or herself in execution of the judgment, but the court has reason to believe that sufficient excuse may exist for his or her neglect to appear or surrender himself or herself, the court may continue the case for such period as it deems reasonable to enable the defendant to appear without ordering a forfeiture of bail or issuing a bench warrant.

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 avoid unnecessary expense in connection with bail procedures it is necessary for this act to go into immediate effect.

CHAPTER 1082

An act to amend Sections 76000, 76001, 76005, and 76006 of the Government Code, relating to justice facilities.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 76000 of the Government Code, as amended by Chapter 300 of the Statutes of 1987, is amended to read:

76000. (a) In each county, provided that the board of supervisors has adopted a resolution stating that the provisions of this section and Section 76001, 76002, 76004, 76005, 76006, or 76008 are necessary to the establishment of adequate facilities in the county, the following surcharges and assessments shall be collected, except that a resolution adopted pursuant to Section 76004 may limit the collection to the assessments specified in paragraph (2) or paragraph (3), as applicable, and a resolution adopted pursuant to Section 76005 or 76008 shall limit the collection to the assessments specified in paragraph (2):

(1) With respect to each fund established, for every parking offense where a fine or forfeiture is imposed, a surcharge of one dollar and fifty cents ($1.50) shall be included in the fine or forfeiture.

The judges of the county shall increase the bail schedule amounts as appropriate to reflect the surcharge provided for by this subdivision.

In those cities, districts, or other issuing agencies which elect to receive, deposit, accept forfeitures, and otherwise process the posting of bail for parking violations pursuant to subdivision (3) of Section 1463 of the Penal Code, that city, district, or issuing agency shall observe the increased bail amounts as established by the court reflecting the surcharge provided for by this paragraph.

(2) With respect to each fund established, except in the counties listed in paragraph (3), there shall be levied an additional amount of one dollar ($1) for every ten dollars ($10) or fraction thereof which shall be collected together with and in the same manner as the assessment established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation 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 paragraph (iii) of subdivision (3) of Section 258 of the Welfare and Institutions Code. This amount shall be deposited with the county treasurer and placed in the fund established pursuant to Section 76001, 76002, 76004, 76005,

76003, or 76008.

(3) Except as provided in Section 5 of the act which added this paragraph, but notwithstanding any other provision of law, in Alameda, Contra Costa, Los Angeles, Marin, Monterey, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Ventura, and Yolo Counties, with respect to each fund established, there shall be levied an additional amount of two dollars ($2) for every ten dollars ($10) or fraction thereof which shall be collected together with and in the same manner as the assessment established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation 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 paragraph (iii) of subdivision (3) of Section 258 of the Welfare and Institutions Code. These amounts shall be deposited with the county treasurer and placed in the funds established pursuant to Sections 76004 and 76006.

(b) The surcharge and assessment increase imposed pursuant to this section shall continue so long as deposits to the funds are required pursuant to Section 76001, 76002, 76004, 76005, 76006, or 76008.

(c) No county, city and county, city, district or other issuing agency shall be required to contribute revenues to any fund in excess of those revenues generated from the surcharges and assessments established in the resolution adopted pursuant to this section.

SEC. 1.3. Section 76000 of the Government Code, as amended by Chapter 300 of the Statutes of 1987, is amended to read:

76000. (a) In each county, provided that the board of supervisors has adopted a resolution stating that the provisions of this section and Section 76001, 76002, 76004, 76005, 76006, 76008, or 76009 are necessary to the establishment of adequate facilities in the county, the following surcharges and assessments shall be collected, except that a resolution adopted pursuant to Section 76004 may limit the collection to the assessments specified in paragraph (2) or paragraph (3), as applicable, a resolution adopted pursuant to Section 76005 or 76008 shall limit the collection to the assessments specified in paragraph (2), and a resolution adopted pursuant to Section 76009 shall limit the collection to the assessments specified in paragraph (4):

(1) Except as limited by resolution pursuant to this subdivision, with respect to each fund established pursuant to Section 76001, 76002, 76004, 76006, or 76008, for every parking offense where a fine or forfeiture is imposed, a surcharge of one dollar and fifty cents ($1.50) shall be included in the fine or forfeiture.

The judges of the county shall increase the bail schedule amounts as appropriate to reflect the surcharge provided for by this

subdivision.

In those cities, districts, or other issuing agencies which elect to receive, deposit, accept forfeitures, and otherwise process the posting of bail for parking violations pursuant to subdivision (3) of Section 1463 of the Penal Code, that city, district, or issuing agency shall observe the increased bail amounts as established by the court reflecting the surcharge provided for by this paragraph.

(2) With respect to each fund established pursuant to Section 76001, 76002, 76004, 76006, or 76008, except in the counties listed in paragraph (3), there shall be levied an additional amount of one dollar ($1) for every ten dollars ($10) or fraction thereof which shall be collected together with and in the same manner as the assessment established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation 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 paragraph (iii) of subdivision (3) of Section 258 of the Welfare and Institutions Code. This amount shall be deposited with the county treasurer and placed in the fund established pursuant to Section 76001, 76002, 76004, 76005, 76006, or 76008.

(3) Except as provided in Section 5 of the act which added this paragraph, but notwithstanding any other provision of law, in Alameda, Contra Costa, Los Angeles, Marin, Monterey, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Ventura, and Yolo Counties, with respect to each fund established, there shall be levied an additional amount of two dollars ($2) for every ten dollars ($10) or fraction thereof which shall be collected together with and in the same manner as the assessment established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation 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 paragraph (iii) of subdivision (3) of Section 258 of the Welfare and Institutions Code. These amounts shall be deposited with the county treasurer and placed in the funds established pursuant to Sections 76004 and 76006.

(4) With respect to each fund established pursuant to Section 76009, there shall be levied an additional amount of fifty cents ($.50) for every ten dollars ($10) or fraction thereof which shall be collected together with and in the same manner as the assessment established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation 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 paragraph (iii) of subdivision (3) of Section 258 of the Welfare and Institutions Code. This amount shall be deposited with the county treasurer and placed in the fund established pursuant to Section 76009.

(b) The surcharge and assessment increase imposed pursuant to this section shall continue so long as deposits to the funds are required pursuant to Section 76001, 76002, 76004, 76005, 76006, 76008, or 76009.

(c) No county, city and county, city, district or other issuing agency shall be required to contribute revenues to any fund in excess of those revenues generated from the surcharges and assessments established in the resolution adopted pursuant to this section, except as otherwise agreed upon by the local governmental entities involved.

SEC. 1.5. Section 76001 of the Government Code is amended to read:

76001. (a) All courtroom construction in the County of Los Angeles which utilizes moneys from the Robbins Courthouse Construction Fund or moneys borrowed against the Robbins Courthouse Construction Fund shall be within the boundaries of the San Fernando Valley Statistical Area and the Los Cerritos Municipal Court District, until the time that the County of Los Angeles has spent a total of at least forty-three million dollars ($43,000,000) on courthouse construction within the San Fernando Valley Statistical Area and at least eight million dollars ($8,000,000) within the Los Cerritos Municipal Court District for the Bellflower courthouse.

(b) All courtroom construction in the County of Los Angeles which utilizes moneys from the Robbins Courthouse Construction Fund or moneys borrowed against the Robbins Courthouse Construction Fund shall be within the boundaries of the San Fernando Valley Statistical Area, within the boundaries of the East Los Angeles Municipal Court District, within the boundaries of the Los Cerritos Municipal Court District, within the Downey Municipal Court District, within the community of Hollywood, or within the West Los Angeles Branch of the Los Angeles Municipal Court District, until the time that the County of Los Angeles has fulfilled the requirements of subdivision (a) and has additionally spent at least sixteen million five hundred thousand dollars ($16,500,000) on courthouse construction within the East Los Angeles Municipal Court District, has spent at least ten million dollars ($10,000,000) on courthouse construction within the Downey Municipal Court District, has commenced construction on a courthouse with at least six courtrooms in the community of Reseda, has commenced construction on a courthouse with at least two courtrooms in the community of Hollywood, has commenced construction on a courthouse for the superior court with at least 15 courtrooms in the

North Hollywood Redevelopment Project Area of the City of Los Angeles or immediately adjacent thereto, and has commenced construction on a courthouse for the West Los Angeles Branch of the Los Angeles Municipal Court District.

(c) All courtroom construction in the County of Los Angeles which utilizes moneys from the Robbins Courthouse Construction Fund or moneys borrowed against the Robbins Courthouse Construction Fund shall be within the boundaries of the San Fernando Valley Statistical Area, within the boundaries of the East Los Angeles Municipal Court District, within the boundaries of the Los Cerritos Municipal Court District, within the Downey Municipal Court District, within the community of Hollywood, within the Pasadena Judicial District, within the Southeast Municipal Court District, or the Southbay Judicial District, or within the Santa Monica Judicial District, until the time that the County of Los Angeles has fulfilled the requirements of subdivisions (a) and (b), and has commenced construction of new facilities or the expansion of existing facilities for the municipal courts in the Pasadena Judicial District, the north and south branches of the Southeast Municipal Court District, the Southbay Judicial District, and the Santa Monica Judicial District.

(d) For purposes of this section, the San Fernando Valley Statistical Area includes all land within the San Fernando Valley Statistical Area (as defined in subdivision (c) of Section 11093) as well as the City of San Fernando, the City of Hidden Hills, and the unincorporated areas of Los Angeles County located west of the City of Los Angeles, east and south of the Ventura County line, and north of a line extended westerly from the southern boundary of the San Fernando Valley Statistical Area (as defined in subdivision (c) of Section 11093).

(e) Notwithstanding any other provision of law, to assist the County of Los Angeles in the funding of courtroom construction, the Board of Supervisors of Los Angeles County shall establish in the county treasury a Robbins Courthouse Construction Fund. Deposits shall be made to the fund, as follows:

(1) The county treasurer shall place in the fund one dollar and fifty cents ($1.50) for each parking case presented to or filed in the courts of the county. The moneys shall be taken from fines and forfeitures deposited with the treasurer prior to any division pursuant to Section 1463 of the Penal Code.

(2) Each city, district, or other issuing agency which elects to receive, deposit, accept forfeitures, and otherwise process the posting of bail for parking violations pursuant to subdivision (3) of Section 1463 of the Penal Code, shall pay one dollar and fifty cents ($1.50) for each bail deposit collected on each violation which is not filed in court to the county treasurer. The payments to the county treasurer shall be made monthly, and the treasurer shall deposit all those payments in the fund.

(3) The county treasurer shall place all additional assessment

amounts collected on nonparking offenses, pursuant to Section 76000, in the fund.

(f) The fund moneys together with any interest earned thereon shall be held by the treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code. The moneys of the Robbins Courthouse Construction Fund together with any interest earned thereon shall be payable only for courtroom construction and land acquisition as authorized in subdivision (a) and, after the requirement of subdivision (a) has been met, shall be payable only for courtroom construction and land acquisition as authorized in subdivision (b) and, after the requirements of subdivisions (a) and (b) have been met, shall be payable only for courtroom construction and land acquisition as authorized in subdivision (c). However, on or after June 1 in any fiscal year and until June 1, 1988, the County of Los Angeles may make temporary transfers of fund moneys to its general fund to assist the county in balancing its general fund. Any such transfer shall be treated as an advance and shall be repaid to the Robbins Courthouse Construction Fund within 180 days of the transfer.

(g) Deposits to the fund in accordance with subdivision (d) shall continue through and including either (1) the 25th year after the initial calendar year in which the surcharge is collected or (2) whatever period of time is necessary to repay any borrowings made by the county to pay for construction provided for in this section, whichever time is longer.

(h) The resolution adopted by the Board of Supervisors of the County of Los Angeles on September 2, 1980, stating that the provisions of Chapter 578 of the Statutes of 1980 are necessary to the establishment of adequate courtroom facilities in the County of Los Angeles shall be deemed a resolution stating that the provisions of Section 76000 and this section are necessary to the establishment of adequate courtroom facilities in the county, and shall satisfy the requirement of Section 76000.

SEC. 2. Section 76005 of the Government Code is amended to read:

76005. (a) Notwithstanding any other provision of law, to assist a county other than a county or city and county listed in Section 76001, 76002, or 76006 in the acquisition, rehabilitation, construction, and financing of courtrooms or of a courtroom building or buildings containing facilities necessary to the operation of the courts, and, in Monterey County, the improvement of criminal justice automated information systems, and, in San Bernardino County, the maintenance, operation, construction, reconstruction, or expansion of county juvenile justice rehabilitation facilities, the board of supervisors of a county other than a county or city and county listed in Section 76001, 76002, or 76006, operative upon the adoption of a resolution stating that the provisions of this section and the assessments provided for in paragraph (2) of subdivision (a) of Section 76000 are necessary to the establishment of adequate

courtroom facilities in the county, may establish in the county treasury a Courthouse Temporary Construction Fund.

The county treasurer shall place all assessment amounts collected on nonparking offenses pursuant to paragraph (2) of subdivision (a) of Section 76000 in the fund.

(b) The fund moneys together with any interest earned thereon shall be held by the treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code. The moneys of the Courthouse Temporary Construction Fund together with any interest earned thereon shall be payable only for courtroom construction as authorized in subdivision (a); provided, that in Monterey County, for a five-year period, up to 50 percent of the moneys deposited each year in the Courthouse Temporary Construction Fund, but in no case exceeding a total of five hundred thousand dollars ($500,000) for the five-year period, may be payable for the improvement of criminal justice automated information systems upon the adoption of a resolution by the board of supervisors stating that such moneys used for automated information system improvement purposes are not required for the construction of courthouse buildings during the five-year period; and provided, that in San Bernardino County moneys deposited each year in the Courthouse Temporary Construction Fund may also be used for the maintenance, operation, construction, reconstruction, or expansion of county juvenile justice rehabilitation facilities.

(c) Deposits to the fund in accordance with subdivision (a) shall continue through and including either (1) the 20th year after the initial calendar year in which the surcharge is collected or (2) whatever period of time is necessary to repay any borrowings made by the county to finance construction provided for in this section, whichever time shall be longer.

SEC. 3. Section 76006 of the Government Code is amended to read:

76006. (a) Except as provided in Section 5 of the act which added this section, but notwithstanding any other provision of law, for the purpose of assisting the Alameda, Contra Costa, Marin, Monterey, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Ventura, or Yolo County in the acquisition, rehabilitation, construction, and financing of courtrooms or of a courtroom building or buildings containing facilities necessary or incidental to the operation of the justice system, the board of supervisors shall establish in the county treasury a Courthouse Temporary Construction Fund into which shall be deposited the amounts collected pursuant to subdivisions (d), (e), and (f). The moneys of the Courthouse Temporary Construction Fund shall be payable only for the purposes set forth in subdivision (b) and at the time necessary therefor.

(b) In conjunction with the acquisition, rehabilitation, construction, or financing of courtrooms or of a courtroom building

or buildings referred to in subdivision (a), the county may use the moneys of the Courthouse Temporary Construction Fund (1) to rehabilitate existing courtrooms or an existing courtroom building or buildings for other uses if a new courtroom or a courtroom building or buildings are acquired, constructed, or financed or (2) to acquire, rehabilitate, construct, or finance excess courtrooms or an excess courtroom building or buildings if such excess is anticipated to be needed at a later time.

(c) Any excess courtroom or excess courtroom building or buildings that are acquired, rehabilitated, constructed, or financed pursuant to subdivision (b) may be leased or rented for uses other than the operation of the justice system until such time as such excess courtrooms or excess courtroom building or buildings are needed for the operation of the justice system. Any amount received as lease or rental payments pursuant to this subdivision shall be deposited in the Courthouse Temporary Construction Fund.

(d) Except in Marin, Monterey, Riverside, San Luis Obispo, Solano, Sonoma, Stanislaus, Ventura, and Yolo Counties, the county treasurer shall place in the fund one dollar and fifty cents ($1.50) for each parking case presented to or filed in the courts of the county. Such moneys shall be taken from fines and forfeitures deposited with the treasurer prior to any division pursuant to Section 1463 of the Penal Code.

(e) Except in Marin, Monterey, Riverside, San Luis Obispo, Solano, Sonoma, Stanislaus, Ventura, and Yolo Counties, each city, district, or other issuing agency which elects to receive, deposit, accept forfeitures, and otherwise process the posting of bail for parking violations pursuant to subdivision (3) of Section 1463 of the Penal Code, shall pay one dollar and fifty cents ($1.50) for each bail deposit collected on each violation which is not filed in court to the county treasurer. Such payments to the county treasurer shall be made monthly, and the treasurer shall deposit all such sums in the fund.

(f) The county treasurer shall place all additional assessment amounts collected on nonparking offenses pursuant to paragraph (3) of subdivision (a) of Section 76000 in the fund.

The fund moneys shall be held by the treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code.

Deposits to the fund in accordance with subdivisions (d), (e), and this subdivision shall continue through and including the 20th year after the initial calendar year in which the surcharge is collected.

(g) Subdivisions (a) to (f), inclusive, of this section shall become operative upon the adoption of a resolution by the board of supervisors stating that the provisions of this section are necessary to the establishment of adequate courtroom facilities in the county setting forth the surcharge or surcharges, and the manner in which such surcharge or surcharges shall be collected, and instructing the county clerk to transmit, on the next business day following the

adoption of the resolution, a copy of the resolution to the clerk of the municipal court.

SEC. 4. Section 1.3 of this bill incorporates amendments to Section 76000 of the Government Code proposed by both this bill and SB 1148. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 76000 of the Government Code, and (3) this bill is enacted after SB 1148, in which case Section 1 of this bill shall not become operative.

SEC. 5. Notwithstanding any other provision of law, Alameda County may collect funds pursuant to the provisions of this act only so long as the county maintains the Berkeley-Albany Municipal Court. In the event that the Berkeley-Albany Municipal Court is closed, Alameda County shall not collect funds pursuant to any provision of this act.

CHAPTER 1083

An act to amend Section 36503.5 of the Government Code, and to add Section 5011 to the Education Code, relating to elections, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 5011 is added to the Education Code, to read:

5011. Nothwithstanding paragraph (2) of subdivision (b) of Section 5010.7, the Board of Supervisors for Mendocino and Marin Counties may waive the requirement of paragraph (1) of subdivision (b) of Section 5010.7 for the Sonoma County Junior College District on a one-time basis in order to allow the consolidation of the election for its governing board members scheduled to be held in November 1987, with the general election scheduled for November 1988, in Mendocino and Marin Counties.

SEC. 2. Section 36503.5 of the Government Code is amended to read:

36503.5. (a) (1) A city council may enact an ordinance requiring its general municipal election to be held on the same day as the statewide direct primary election, the day of the statewide general election, or on the day of school district elections, as set forth in Section 2602 of the Elections Code. Any ordinance adopted pursuant to this subdivision shall become operative upon the approval of the board of supervisors. An ordinance shall be approved by the board of supervisors unless the ballot style, voting equipment, or computer capability is such that additional elections or materials cannot be

handled. Prior to adoption of a resolution to either approve or deny a consolidation request, the board or boards of supervisors shall each obtain from the elections official a report on the cost effectiveness of the proposed action.

(2) A city, by itself or in concert with other cities, may purchase or otherwise contribute to the purchase of elections equipment, including, but not limited to, a computer for the purposes of conducting a consolidated election when the equipment shall be owned by the county.

(b) As the result of the adoption of an ordinance pursuant to this section, no term of office shall be increased or decreased by more than 12 months. As used in this subdivision, "12 months" means the period between the day upon which the term of office would otherwise have commenced and the first Tuesday after the second Monday in the 12th month before or after that day, inclusive.

(c) If an election is held pursuant to subdivision (a), and the election is consolidated with another election, Part 2.5 (commencing with Section 23300) of Division 14, except Section 23302, of the Elections Code shall govern the consolidation, and, if the county clerk is requested to conduct the municipal election, Section 22003 of the Elections Code shall be applicable to that election.

(d) If, pursuant to subdivision (a), a general municipal election is held on the same day as a statewide election, those city officers whose terms of office would have, prior to the adoption of the ordinance, expired on the Tuesday succeeding the second Tuesday in April of an even-numbered year, shall, instead, continue in their offices until no later than the fourth Tuesday after the day of the general municipal election, and until their successors are elected and qualified.

(e) Within 30 days after the ordinance becomes operative pursuant to subdivision (a), the city clerk shall cause a notice to be mailed to all registered voters informing the voters of the change in the election date. The notice shall also inform the voters that as a result in the change in the election date, elected city officeholders' terms in office will be changed.

(f) If a city adopts an ordinance pursuant to subdivision (a), the municipal election following the adoption of the ordinance and each municipal election thereafter shall be conducted on the date specified by the city council, in accordance with subdivision (a), unless the ordinance in question is later repealed by the city council.

(g) If the date of a general municipal election is changed pursuant to this section, at least one election shall be held before the ordinance, as approved by the board of supervisors, may be subsequently repealed or amended.

SEC. 3. Due to unique circumstances concerning the Sonoma County Junior College District, which has territory in Mendocino and Marin Counties, as well as in Sonoma County, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California

Constitution for purposes of Section 1 of 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 to consolidate the election of the Governing Board of the Sonoma County Junior College District scheduled for November 1987, with the general election in the affected counties, to permit cities and school districts that consolidated their elections pursuant to previous provisions of Section 36503.5 of the Government Code to hold elections scheduled for November 1987, and in order for revisions of existing law pertaining to voter registration to become effective at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1084

An act to amend Section 9315 of the Welfare and Institutions Code, relating to seniors.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 9315 of the Welfare and Institutions Code is amended to read:

9315. (a) The department shall implement by July 1, 1985, a new intrastate funding formula in accordance with all federal regulations. This formula shall apply to all federal and state funds allocated for programs provided for under Title III of the federal Older Americans Act (42 U.S.C. Sec. 3021, et seq.).

The intrastate funding formula shall include all of the following:

(1) Assurances that all area agencies on aging shall have a fifty thousand dollar ($50,000) administrative base with the remainder of the allowable administrative dollars allocated to planning and service area on the basis of number of persons over the age of 60 years.

Area agencies on aging shall use no state funds for administrative purposes.

(2) Where data is available, an annual adjustment for changes in population characteristics to include the number of persons per planning and service area over the age of 60 years and persons in greatest economic or social need as measured by all of the following variables:

(A) Number of persons over the age of 65 years receiving aid under the State Supplementary Program, provided for under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9.

(B) Number of persons over the age of 75 years.

(C) Number of minority elderly over the age of 60 years.

(D) Number of persons over the age of 60 years living alone.

(E) Number of non-English-speaking persons over the age of 60 years.

The weight given to each variable shall simulate the weighting used in the Washington State intrastate funding formula adjusting for the geographic factor.

(3) A rural factor which guarantees a 105 percent allocation to rural planning and service areas.

(4) A hold-harmless factor which guarantees that no planning and service area shall have its federal and state allocation of funds under Title III of the federal Older Americans Act (42 U.S.C., Sec. 3021, et seq.), excluding area agency on aging administrative costs and funds carried over from the 1983–84 fiscal year, reduced below the 1984–85 fiscal year funding levels.

(b) In the event that additional federal or state funds, in excess of those appropriated under the 1984–85 Budget Act, or subsequent Budget Acts are made available for services, these funds shall be used to maintain existing service levels, with the remainder to be distributed to those planning and service areas which have been determined by the department to be underequity until parity is achieved.

(c) One-time-only funds shall be used for one-time-only purposes, including:

(1) The purchase of capital equipment which enhances the delivery of services to those seniors identified as being in greatest social or economic need as determined by the local planning process.

(2) Home and community based long-term care projects which encourage families to maintain their elderly members in the home environment.

(3) Innovative pilot projects, as determined by the department.

Preference shall be given to those planning service areas which have been determined by the Department of Aging to be underequity as defined in subdivision (b).

The department shall report annually, commencing December 1, 1988, to the Assembly Committee on Aging and Long Term Care and the Senate Subcommittee on Aging regarding the allocation of one-time-only funds in accordance with the provisions of this subdivision.

(d) The department shall develop, in conjunction with the intrastate funding formula, a methodology for assuring compliance with the state targeting strategy on an intraplanning and service area basis. In developing this methodology the department shall provide assurances that as additional federal and state service dollars are allocated to the planning and service areas these dollars will be expended on those elderly persons identified as in greatest economic or social need.

(e) For purposes of this section, "one-time-only funds" means the

combination of unspent funds which were budgeted to an area agency on aging and unearned funds resulting from audit resolutions.

CHAPTER 1085

An act to add Section 66456.2 to the Government Code, relating to subdivisions.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 66456.2 is added to the Government Code, to read:

66456.2. (a) An improvement plan being processed in conjunction with either an approved tentative, parcel, or final map shall be acted on within 60 working days of its submittal, except that at least 15 working days shall be provided for processing any resubmitted improvement plan. The 60 working day period shall not include any days during which the improvement plan has been returned to the applicant for correction, has been subject to review by other than the local agency or, following that review, has been returned to the applicant for correction.

(b) The time limits specified in this section for acting on improvement plans may be extended by mutual consent of the subdivider and the advisory agency or legislative body required to act. However, no advisory agency or legislative body may require a routine waiver of time limits as a condition of accepting the improvement plan. A routine waiver may be obtained for the purpose of permitting concurrent processing of other requirements related to the improvement plan or map.

(c) If, at the time of submittal or resubmittal, the local agency or designee determines it is unable to meet the time limits of this section, the local agency or designee shall, upon request of the subdivider and for purposes of meeting the time limits, contract or employ a private entity or persons on a temporary basis to perform services necessary to permit the agency or designee to meet the time limits. However, a local agency or designee need not enter into a contract or employ those persons if it determines either of the following:

(1) No entities or persons are available or qualified to perform the services.

(2) The local agency or designee would be able to perform services in a more rapid fashion by modifying its own work schedule than would any available and qualified persons or entities.

A local agency may charge the subdivider fees in an amount

necessary to defray costs directly attributable to employing or contracting with entities or persons performing services pursuant to this section.

(d) "Improvement plan" means the plan for public improvement as described in Sections 66418 and 66419.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because self-financing authority is provided in Section 66451.2 of the Government Code to cover any costs that may be incurred in carrying on any program or performing any service required to be carried on or performed by this act.

CHAPTER 1086

An act to amend Sections 4607 and 4801 of, and to add Section 4801.9 to, the Civil Code, and to amend Section 11475.5 of the Welfare and Institutions Code, relating to family law.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 4607 of the Civil Code is amended to read:

4607. (a) In any proceeding where there is at issue the custody of or visitation with a minor child, and where it appears on the face of the petition or other application for an order or modification of an order for the custody or visitation of a child or children that either or both such issues are contested, as provided in Section 4600, 4600.1 or 4601, the matter shall be set for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing. Upon the adoption of a resolution by the board of supervisors authorizing the procedure, a petition also may be filed pursuant to this section for the mediation of a dispute relating to any existing order for custody or visitation; the mediation of a dispute concerning an existing order shall be set not later than 60 days after the filing of the petition. The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child or children's close and continuing contact with both parents. The mediator shall use his or her best efforts to effect a settlement of the custody or visitation dispute.

(b) Each superior court shall make available a mediator. The mediator may be a member of the professional staff of a family conciliation court, probation department, or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court shall not be required to institute a family conciliation court. The mediator shall

meet the minimum qualifications required of a counselor of conciliation as provided in Section 1745 of the Code of Civil Procedure.

(c) Mediation proceedings shall be held in private and shall be confidential, and all communications, verbal or written, from the parties to the mediator made in a proceeding pursuant to this section shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

(d) The mediator shall have the authority to exclude counsel from participation in the mediation proceedings where, in the discretion of the mediator, exclusion of counsel is deemed by the mediator to be appropriate or necessary. The mediator shall have the duty to assess the needs and interests of the child or children involved in the controversy and shall be entitled to interview the child or children when the mediator deems the interview appropriate or necessary.

(e) The mediator may, consistent with local court rules, render a recommendation to the court as to the custody or visitation of the child or children. The mediator may, in cases where the parties have not reached agreement as a result of the mediation proceeding, recommend to the court that an investigation be conducted pursuant to Section 4602, or that other action be taken to assist the parties to effect a resolution of the controversy prior to any hearing on the issues. The mediator may, in appropriate cases, recommend that mutual restraining orders be issued, pending determination of the controversy, to protect the well-being of the children involved in the controversy. Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court.

(f) Nothing in this section shall prohibit the mediator from recommending to the court that counsel be appointed pursuant to Section 4606 to represent the minor child or children. In making any recommendation, the mediator shall inform the court of the reasons why it would be in the best interests of the minor child or children to have counsel appointed.

SEC. 2. Section 4801 of the Civil Code is amended to read:

4801. (a) In any judgment decreeing the dissolution of a marriage or a legal separation of the parties, the court may order a party to pay for the support of the other party any amount, and for any period of time, as the court may deem just and reasonable. In making the award, the court shall consider all of the following circumstances of the respective parties:

(1) The earning capacity of each spouse, taking into account the following:

(A) The marketable skills of the supported spouse; the job market for those skills; the time and expenses required for the supported spouse to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.

(B) The extent to which the supported spouse's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported spouse to devote time to domestic duties.

(C) The extent to which the supported spouse contributed to the attainment of an education, training, a career position, or a license by the other spouse.

(2) The needs of each party.

(3) The obligations and assets, including the separate property, of each.

(4) The duration of the marriage.

(5) The ability of the supported spouse to engage in gainful employment without interfering with the interests of dependent children in the custody of the spouse.

(6) The age or health of the parties.

(7) The standard of living of the parties.

(8) Any other factors which it deems just and equitable.

At the request of either party, the court shall make appropriate factual determinations with respect to the circumstances. The court may order the party required to make the payment of support to give reasonable security therefor. Any order for support of the other party may be modified or revoked as the court may deem necessary, except as to any amount that may have accrued prior to the date of the filing of the notice of motion or order to show cause to modify or revoke. Any order for spousal support may be made retroactive to the date of filing of the notice of motion or order to show cause therefor, or to any subsequent date. At the request of either party, the order of modification or revocation shall include a statement of decision and may be made retroactive to the date of filing of the notice of motion or order to show cause therefor, or to any subsequent date.

(b) Except as otherwise agreed by the parties in writing, the obligation of any party under any order or judgment for the support and maintenance of the other party shall terminate upon the death of either party or the remarriage of the other party.

(c) When a court orders a person to make specified payments for support of the other party for a contingent period of time, the liability of the person terminates upon the happening of the contingency. If the party to whom payments are to be made fails to notify the person ordered to make the payments, or the attorney of record of the person so ordered, of the happening of the contingency and continues to accept support payments, the supported party shall refund any and all moneys received which accrued after the happening of the contingency, except that the overpayments shall first be applied to any and all support payments which are then in default. The court may, in the original order for support, order the party to whom payments are to be made to notify the person ordered to make the payments, or his or her attorney of record, of the happening of the contingency.

(d) An order for payment of an allowance for the support of one of the parties shall terminate at the end of the period specified in the order and shall not be extended unless the court in its original order retains jurisdiction. Except upon written agreement of the parties to the contrary or a court order terminating spousal support, the court retains jurisdiction indefinitely where the marriage has been of long duration.

For purposes of retaining jurisdiction, there is a presumption affecting the burden of providing evidence, that a marriage of 10 years or more, from the date of marriage to the date of separation, is a marriage of long duration. However, the court may consider periods of separation during the marriage in determining whether the marriage is in fact of long duration. Nothing in this section precludes a court from determining that a marriage of less than 10 years is a marriage of long duration. Nothing in this section limits the court's discretion to terminate spousal support in subsequent proceedings upon a showing of changed circumstances.

The amendments to this subdivision enacted at the 1987 portion of the 1987–88 Regular Session apply in those proceedings pending on January 1, 1988, in which the court has not entered a permanent spousal support order or in which the court order is subject to modification and to any case filed on or after January 1, 1988.

(e) In any proceeding under this section the court may order a party to submit to an examination by a vocational training consultant. The order may be made only on motion, for good cause shown, and upon notice to the party to be examined and to all parties, and shall specify the time, place, manner, conditions, scope of the examination, and the person or persons by whom it is to be made. The party refusing to comply with such an order shall be subject to the same consequences provided for failure to comply with an examination ordered pursuant to Section 2032 of the Code of Civil Procedure.

(f) For the purposes of this section, "vocational training consultant" means an individual with sufficient knowledge, skill, experience, training, or education relating to interviewing, the testing and analysis of work skills, the planning of courses of training and study, the formulation of career goals, and the work market to qualify as an expert in vocational training under Section 720 of the Evidence Code.

SEC. 3. Section 4801.9 is added to the Civil Code, to read:

4801.9. (a) It is the intention of the Legislature in enacting this section to provide an additional, simplified method for the modification of spousal support awards.

(b) A notice of motion to modify an order awarding spousal support may be filed under this section at any time subsequent to one year after the entry of a previous order for the award of spousal support, except that the one-year limitation shall not be applicable if the request for modification is based on a significant decrease in the income of the moving party.

A motion to modify spousal support shall include a proposed order for modification of spousal support, and a declaration that the facts on which the motion is based are true and correct, under penalty of perjury. The moving party shall cause the notice of motion and the proposed order to be served on the other party to the spousal support award. The responding party shall have 30 days from the date of service within which to file an objection and request for a hearing. If the responding party so files, he or she shall be responsible for requesting a hearing date and giving notice thereof to the moving party. The original proof of service of the notice of the objection and request shall be filed at the same time as the filing of the objection and the request for hearing.

(c) No attorney at law or person other than the moving or responding party shall take any part in the filing or prosecution or defense of a proceeding pursuant to this section, unless the attorney is appearing as a party to the proceeding. Nothing in this section shall be construed to prohibit an attorney from rendering advice to a party to the proceeding, either before or after the commencement of the proceeding. However, if a party to such a proceeding elects to be represented by counsel, the court shall proceed on the motion as specified in subdivision (h).

(d) Only one modification of spousal support pursuant to this section shall be granted within any 12-month period, except in cases where the request for a modification is based on a significant decrease in the income of the moving party.

The court may grant an increase of spousal support, not to exceed an amount equal to the increase in the California all consumer price index provided by the federal government for each year subsequent to the date on which the current award was granted, without requiring a showing of changed circumstances by the moving party, to the extent justified by the economic evidence presented by way of the income statements (and expense statements, if the court deems them necessary and relevant) of the parties. In the event of a default by the responding party, the court shall award an increase, without requiring the submission of economic evidence by the moving party.

In cases in which the request for modification is based on a significant decrease in the income of the moving party, the court may require the moving party to present evidence of his or her decline in economic circumstances. The amount of the modification shall be based on the economic evidence presented by way of income statements (and expense statements, if the court deems them necessary and relevant) of the parties. In the event of a default by the responding party in a case where the request for the modification is based on a significant decrease in the income of the moving party, the court shall award a modification based on the evidence. If the court considering the request for modification awards spousal support according to guidelines in use within its jurisdiction, the amount of modification shall be based on those guidelines. If no

guidelines are in use, the amount of the modification shall be based on the factors employed in determining the existing award.

In addition to the income statement (and the expense statement, if required by the court), in a contested proceeding, both the moving party and the responding party shall make available to the court copies of their federal and state income tax returns for the preceding year at the time of the hearing. No relief shall be granted pursuant to this procedure to a party who fails to submit such documents as may be required by the court or a declaration under penalty of perjury that no such documents exist, or that, in the case of a tax return, it cannot be produced but a copy has been requested from the Internal Revenue Service and the Franchise Tax Board. A tax return so submitted may be reviewed by the other party and a party also may be examined by the other party as to contents of any such return.

(e) Notice pursuant to this section shall be by certified mail, postage prepaid, return receipt requested, to the last known address of the party to be served, or by personal service. Proof of service shall be filed with the court. In order to facilitate service of process, each party to an order for spousal support shall provide the other party with his or her current mailing address and any subsequent change of address.

(f) The party filing a notice of motion to modify spousal support with the clerk pursuant to this section shall also file a duplicate copy of the notice with the district attorney within five working days of filing, if the district attorney has previously attempted to enforce the spousal support obligation upon which the motion is based.

(g) Nothing in this section shall be construed to infringe upon the duty of the state to comply with any federal rules and regulations pertaining to the establishment, enforcement, and collection of spousal support payments.

(h) Upon notice by a party to a proceeding under this section that he or she elects to be represented by counsel in the proceeding, the court shall proceed on the motion as in a proceeding for modification of spousal support pursuant to Section 4801. A party's notice of intent to proceed with the benefit of counsel shall be accompanied by the party's declaration under penalty of perjury stating facts evidencing that intent.

(i) The Judicial Council shall adopt forms or notices for the use of the procedure provided by this section, which shall include a notice advising of the right of a party to proceed with or without benefit of counsel, and which shall incorporate, where appropriate, advice as to the availability of this additional, simplified method for the modification of spousal support.

SEC. 4. Section 11475.5 of the Welfare and Institutions Code is amended to read:

11475.5. (a) The State Department of Social Services shall publish a booklet describing the proper procedures and processes for the collection and payment of child and spousal support. The booklet

shall be written in language understandable to the lay person and shall direct the reader to obtain the assistance of the local district attorney's office or legal counsel where appropriate. The department may contract on a competitive basis with an organization or individual to write the booklet.

(b) The department shall have primary responsibility for the design and development of the contents of the booklet. The department shall solicit comment regarding the content of the booklet from the Director of the Administrative Office of the Courts. The department shall verify the appropriateness and accuracy of the contents of the booklet with at least one representative of each of the following organizations:

(1) A county district attorney's office.

(2) The State Attorney General's office.

(3) The California Family Support Council.

(4) A community organization which advocates for the rights of custodial parents.

(5) A community organization which advocates for the rights of supporting parents.

(c) Upon receipt of booklets on support collection, each county welfare department shall provide a copy to each head of household whose application for public assistance under this chapter has been approved and for whom support rights have been assigned pursuant to Section 11477. The State Department of Social Services shall provide copies of the booklet to district attorneys' offices for distribution, and to any person upon request. The department shall also distribute the booklets to all superior courts. Upon receipt of those booklets, each clerk of the court shall provide two copies of the booklet to the petitioner or plaintiff in any action involving the support of a minor child. The moving party shall serve a copy of the booklet on the responding party.

(d) The department shall expand the information provided under its toll-free information hotline in response to inquiries regarding the process and procedures for collection and payment of child and spousal support. This toll-free number shall be advertised as providing information on child and spousal support. The hotline personnel shall not provide legal consultation or advice, but shall provide only referral services.

(e) The department shall maintain a file of referral sources to provide callers to the telephone hotline with the following information specific to the county in which the caller resides:

(1) The location and phone number of the district attorney's office, the county welfare office, and any other government agency which handles child and spousal support matters.

(2) The telephone number of the local bar association for referral to attorneys in family law practice.

(3) The name and telephone number of at least one organization which advocates the payment of child and spousal support or the name and telephone number of at least one organization which

advocates the rights of supporting parents, if these organizations exist in the county.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1087

An act to add Sections 653*l* and 1203.046 to, the Penal Code, relating to crimes.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 653*l* is added to the Penal Code, to read:

653*l*. (a) Every person 18 years of age or older who, in any voluntary manner, solicits, induces, encourages, or intimidates any minor with the intent that the minor shall commit a felony in violation of paragraph (1) of subdivision (c) of Section 136.1 or Section 187, 211, 245, 246, 451, 459, or 520 of the Penal Code, or Section 10851 of the Vehicle Code, shall be punished by imprisonment in the state prison for a period of three, five, or seven years. If the minor is 16 years of age or older at the time of the offense, this section shall only apply when the adult is at least five years older than the minor at the time the offense is committed.

(b) In no case shall the court impose a sentence pursuant to subdivision (a) which exceeds the maximum penalty prescribed for the felony offense for which the minor was solicited, induced, encouraged, or intimidated to commit.

(c) Whenever a sentence is imposed under subdivision (a), the court shall consider the severity of the underlying crime as one of the circumstances in aggravation.

SEC. 2. Section 1203.046 is added to the Penal Code, to read:

1203.046. (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 violating Section 653*l* by using, soliciting, inducing, encouraging, or intimidating a minor to commit a felony in violation of that section.

(b) When probation is granted pursuant to subdivision (a), the court shall specify on the record and shall enter into the minutes the

circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 1088

An act to amend Sections 125.9, 7311, and 7332.6 of, to amend and repeal Section 7444.1 of, to add Sections 7332.7, 7332.8, and 7432 to, to add and repeal Section 7386.8 of, to repeal and add Section 7396.5 of, and to repeal Article 7.5 (commencing with Section 7386) of Chapter 10 of Division 3 of, the Business and Professions Code, relating to cosmetology.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 125.9 of the Business and Professions Code is amended to read:

125.9. (a) Except with respect to persons regulated under Chapter 8 (commencing with Section 6850), Chapter 11 (commencing with Section 7500), Chapter 11.5 (commencing with Section 7512), and Chapter 11.6 (commencing with Section 7590) of Division 3, or a person holding a license specified in paragraph (1), (6), or (7) of subdivision (b) of Section 9941, any board, bureau, or commission within the department, other than the State Board of Dental Examiners, may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations 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.

(2) Where appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed two thousand five hundred dollars ($2,500) for each inspection or each investigation made with respect to the violation. In assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of

the fine with respect to such factors as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

(4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board, bureau, or commission within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

(1) A citation may be issued without the assessment of an administrative fine.

(2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.

(d) Notwithstanding any other provision of law, where a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

(e) This section does not apply to any board, bureau, or commission within the department with existing authority to establish, by regulation, a system for the issuance, to a licensee, of a citation which may include an order of abatement or an order to pay an administrative fine, even if the system of citation does not affect or apply to all activities engaged in by a licensee. Nothing in this section expands or limits that authority.

(f) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, or commission.

SEC. 2. Section 7311 of the Business and Professions Code is amended to read:

7311. The board may adopt such rules governing sanitary conditions, and precautions to be employed, as are reasonably necessary to protect the public health and safety in cosmetological establishments, schools of cosmetology, in the practice of a cosmetologist, and in any branch of cosmetology. The rules shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Title 2 of the Government Code), and shall be submitted to the State Department of Health Services, and approved by that department prior to filing with the Secretary of State. A written copy of all such rules shall be

furnished to each licensee.

SEC. 3. Section 7332.6 of the Business and Professions Code is amended to read:

7332.6. Notwithstanding any other provision of law, any person currently and validly licensed in this state as a cosmetologist who has made application to the board in proper form, has paid the fee required by this chapter, and has not committed acts or crimes constituting grounds for denial of licensure under Section 480, shall be granted a provisional I license as a cosmetology instructor.

Any person issued a provisional I license as a cosmetology instructor who, within a period of not more than six months immediately following the date of expiration thereof, has made application to the board in proper form, accompanied by proof satisfactory to the board of having practiced the occupation of a cosmetology instructor for a period of not less than 10 months full time or its equivalent in a licensed school, has paid the fee required by the chapter and has not committed acts or crimes constituting grounds for denial of licensure under Section 480, shall be admitted to examination for a license as a cosmetology instructor.

SEC. 4. Section 7332.7 is added to the Business and Professions Code, to read:

7332.7. Notwithstanding any other provision of law, any person currently and validly licensed in this state as a cosmetologist with a minimum of one year of practical experience as a cosmetologist in this state within the two years immediately preceding application, who has made application to the board in proper form, has paid the fee required by this chapter, and has not committed any acts or crimes constituting grounds for denial of licensure under Section 480, shall be granted a provisional II license as a cosmetology instructor.

Any person issued a provisional II license as a cosmetology instructor who, within a period of not more than six months immediately following the date of expiration thereof, has made application to the board in proper form, accompanied by proof satisfactory to the board of having practiced the occupation of cosmetology instructor for a period of not less than 10 months full time or its equivalent in a licensed school, has paid the fee required by this chapter, and has not committed acts or crimes constituting grounds for denial of licensure under Section 480, shall be admitted to examination for a license as a cosmetology instructor.

SEC. 5. Section 7332.8 is added to the Business and Professions Code, to read:

7332.8. (a) The provisional I and provisional II license shall authorize the holder thereof to practice the occupation of a cosmetology instructor in a licensed school of cosmetology. There shall not be more than one provisional licensed instructor for each licensed cosmetology instructor employed full time by a school.

(b) Every provisional license as a cosmetology instructor shall expire one year from the date of issue and shall not be renewable. A six-month extension shall be granted by the board if the provisional

instructor has made application for examination prior to the expiration of the provisional license. A person may hold a provisional license as a cosmetology instructor only once.

(c) It is the intent of Sections 7332.6 and 7332.7 that provisional instructors I and II shall be given supervision and guidance in the teaching of vocational education by the licensed cosmetology instructors of the school or schools in which they are engaged.

SEC. 6. Section 7386.8 is added to the Business and Professions Code, to read:

7386.8. This article shall remain in effect only until January 1, 1989, and as of that date is repealed.

SEC. 7. Section 7396.5 of the Business and Professions Code is repealed.

SEC. 8. Section 7396.5 is added to the Business and Professions Code, to read:

7396.5. (a) Every school of cosmetology, including those under the public school system of this state, shall employ at least two licensed cosmetology instructors. When the daily attendance for either day or night school classes averages more than 50 students for a period of three months, at least one additional instructor shall be employed for each three months' average of 25 students or less after the first 50.

(b) The ratio of instructors present and on the premises to students present and on the premises shall be one instructor for the first 25 students and at least one additional instructor for every additional 25 students or less after the first 25. If there are 25 students or less present and on the premises and there are students both on the clinic floor and in the classroom, there shall be at least two instructors present and on the premises.

(c) Provisional II instructors may be employed to meet the requirements of this section at the ratio of one licensed cosmetology instructor to one provisional II instructor provided that only licensed cosmetology instructors shall be employed to meet the requirements for the first 50 students or less.

(d) This section shall remain in effect only until January 1, 1991, and as of that date is repealed.

SEC. 9. Section 7396.5 is added to the Business and Professions Code, to read:

7396.5. (a) Every school of cosmetology, including those under the public school system of this state, shall employ at least two licensed cosmetology instructors. When the daily attendance for either day or night school classes averages more than 50 students for a period of three months, at least one additional instructor shall be employed for each three months' average of 25 students or less after the first 50.

(b) The ratio of instructors present and on the premises to students present and on the premises shall be at least one instructor for the first 25 students, and at least one additional instructor for every additional 25 students or less after the first 25.

If there are 25 students or less present and on the premises and there are students both on the clinic floor and in the classroom, there shall be at least two instructors present and on the premises.

(c) This section shall become operative on January 1, 1991.

SEC. 10. Section 7432 is added to the Business and Professions Code, to read:

7432. Notwithstanding Section 125.9, the following provisions apply to the issuance to a school of cosmetology or electrology of a citation which includes an assessment of an administrative fine:

(a) A citation shall be classified according to the nature of the violation and shall indicate the classification on the face thereof, as follows: (1) An administrative fine may be assessed for the first Class "1" violation. A violation of Section 7320, 7325, 7327, 7392.3, 7392.2, 7400, 7402, or 7415, or subdivision (e), (f), or (g) of Section 7431, of this code, or paragraph (1) of subdivision (a) of Section 911.4 of Chapter 9 of Title 16 of the California Administrative Code, may be designated as a Class "1" violation.

(2) An administrative fine may be assessed for the second "Class 2" violation during any two-year period. A violation of Section 7391.5, 7392.2, 7395, 7396.5, 7397, 7400, or 7402 of this code, or paragraph (4) or (5) of subdivision (b) of Section 911.4, or Section 912, 912.1, 913.2, 913.3, 919.13, 919.16, or 922 of Chapter 9 of Title 16 of the California Administrative Code, may be designated as a Class "2" violation.

(3) An administrative fine may be assessed for a Class "3" violation for the first such violation. The fine for a first violation shall be suspended upon the correction of the conditions constituting the violation within 20 days and the submission of a signed statement to that effect to the board. An administrative fine may be assessed for the second Class "3" violation during any two-year period. A violation of Section 7320, 7325, 7392.3, 7393.1, 7393.2, 7393.5, or 7398, subdivision (c) of Section 7398.5, or subdivision (*l*) of Section 7431, of this code, or Section 911, 911.1, 911.2, 917, or 919.1, subdivision (a) of Section 919.3, subdivision (a) of Section 919.4, or Section 919.7, 919.8, 919.12, or 921 of Chapter 9 of Title 16 of the California Administrative Code may be designated as a Class "3" violation.

(4) A Class "4" violation is a violation of any health and safety regulation of the board not committed by a student. An administrative fine may be assessed when a combination of at least two Class "4" violations are committed two or more times during any two-year period.

(5) A Class "5" violation is a violation of any health and safety regulation of the board committed by a student. An administrative fine may be assessed when a combination of at least three Class "5" violations are committed two or more times during any two-year period.

(b) The board may establish an administrative fine for a Class "1" violation not to exceed one hundred fifty dollars ($150) for the first fine assessed, three hundred dollars ($300) for the second fine assessed, and six hundred dollars ($600) for the third fine assessed.

The board may establish an administrative fine for a Class "2," "3," "4," or "5" violation, not to exceed fifty dollars ($50) for the first fine assessed, one hundred dollars ($100) for the second fine assessed, and two hundred fifty dollars ($250) for the third fine assessed.

(c) A citation issued to a school of cosmetology or electrology which includes the assessment of an administrative fine for a violation of this chapter or regulations adopted by the board effective after January 1, 1988, may be classified according to regulations adopted by the board.

(d) It is the intent of the Legislature that regulations adopted by the board covering the assessment of an administrative fine shall not unduly penalize a school of cosmetology or electrology for infrequent and nonflagrant violations of the board's health and safety rules caused by students in the course of their technical instruction or practical operation.

SEC. 11. Section 7444.1 of the Business and Professions Code is amended to read:

7444.1. The amount of the fees payable under this chapter relating to licenses to operate a mobile cosmetological unit are as follows:

(a) The application fee shall be not more than fifty dollars ($50).

(b) The initial inspection and license fee shall be not more than one hundred dollars ($100).

(c) The renewal fee shall be not more than thirty dollars ($30).

(d) The delinquency fee shall be 50 percent of the renewal fee in effect on the date of renewal.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed.

SEC. 12. The State Board of Cosmetology shall submit a report to the Legislature on or before December 1, 1989, analyzing the cosmetology profession and regulatory scheme, including, but not limited to:

(1) Whether there is a shortage of licensed cosmetology instructors.

(2) The percentage of licensed cosmetology instructors employed by schools of cosmetology.

(3) Whether the use of provisional II instructors in schools of cosmetology effectively meets the needs of both cosmetology schools and students.

The report may also make findings and recommendations, as appropriate, relative to the areas analyzed in the report.

SEC. 13. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1089

An act to amend Section 19901 of the Health and Safety Code, relating to pets.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 19901 of the Health and Safety Code is amended to read:

19901. Notwithstanding any other provision of law, no public agency which owns and operates rental housing accommodations, shall prohibit the keeping of not more than two pets by an elderly person or person requiring supportive services in the rental housing accommodations.

For the purposes of this section:

(a) "Person requiring supportive services" means a person as defined in Section 50885.5.

(b) "Elderly" means any person over the age of 60.

(c) "Pet" means domesticated dog, cat, bird, or aquarium.

(d) "Public" means state, county, city, city and county, district, or other political subdivision of the state.

Nothing in this section shall prevent the local housing authority from requiring the removal from any housing of any pet whose conduct or condition is duly determined to constitute a threat or nuisance to the other occupants of the housing. No pet may be kept in violation of humane or health laws. Nothing in this section authorizes a local housing authority to impose any requirement which makes the keeping of a pet by an elderly person or person requiring supportive services financially prohibitive.

The local housing authority shall not be liable for personal or property damages caused by any pet in the rental housing accommodation, except upon proof of prior actual knowledge on behalf of its agents or employees of a dangerous propensity of the pet or hazardous condition created by the pet.

Nothing in this section shall prevent the local housing authority from adopting reasonable regulations relating to any such pets; prevent the adoption of differing terms for the tenancy which are reasonably related to the presence of such pet; or relieve a tenant from any liability otherwise imposed by law for damages caused by such pet when proof of same exists.

The adoption of any regulations pursuant to this section, or the application of any regulation adopted pursuant to this section, may be appealed by an elderly resident or applicant or resident or

applicant who is a person requiring supportive services in accordance with grievance procedures of the local housing authority established to resolve tenant disputes. A copy of the grievance procedures shall be provided to an elderly tenant or applicant or tenant or applicant who is a person requiring supportive services who keeps a pet.

CHAPTER 1090

An act to amend Section 8361 of, and to add Section 8623 to, the Water Code, relating to flood control, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 8361 of the Water Code is amended to read:

8361. The department shall maintain and operate on behalf of the state the following units or portions of the works of the Sacramento River Flood Control Project, and the cost of maintenance and operation shall be defrayed by the state:

(a) The east levee of the Sutter Bypass north of Nelson Slough.

(b) The levees and channels of the Wadsworth Canal, Willow Slough Channel downstream from the Southern Pacific Railroad from Davis to Woodland except that portion of the north levee thereof lying within Reclamation District No. 2035, Putah Creek downstream from Winters, the intercepting canals draining into them, and all structures incidental thereto.

(c) The collecting canals, sumps, pumps, and structures of the drainage system of Project No. 6 east of the Sutter Bypass.

(d) The bypass channels of the Butte Slough Bypass, the Sutter Bypass, the Tisdale Bypass, the Yolo Bypass, and the Sacramento Bypass with all cuts, canals, bridges, dams, and other structures and improvements contained therein and in the borrow pits thereof.

(e) The levees of the Sacramento Bypass.

(f) The channels and overflow channels of the Sacramento River and its tributaries and the major and minor tributaries' flood control projects as authorized and defined in Sections 12648, 12648.1, and 12656.5.

(g) The Knights Landing ridge cut flowage area.

(h) The flood relief channels controlled by the Moulton and Colusa Weirs and the training levees thereof.

(i) The levee on the left bank of the Sacramento River adjoining Butte Basin, from the Butte Slough outfall gates upstream to a point four miles northerly from the Moulton Weir, after completion.

(j) All weirs and flood relief structures.

(k) The west levee of the Yolo Bypass, extending from the west end of the Fremont Weir southerly to the Cache Creek Settling Basin and from Willow Slough Channel to Putah Creek and the east levee of the Yolo Bypass from Fremont Weir southerly two miles.

(*l*) The levee on the west bank of Feather River extending a distance of about two miles southerly from the Sutter-Butte Canal headgate.

(m) The levees of Cache Creek and the easterly and westerly levees of Cache Creek Settling Basin; excepting the portion of the southerly levee of Cache Creek lying upstream from State Highway Route 7 (U.S. 99W).

(n) The flowage area of Western Pacific Intercepting Canal extending northerly for a distance of five miles from Bear River.

(o) The levees of Tisdale Bypass from Tisdale Weir 4.5 miles easterly to Sutter Bypass.

(p) The flood relief structures or weirs and other structures or facilities essential for their proper functioning in the vicinity of the Sacramento River between Big Chico Creek and the north boundary of Glenn County Levee District No. 3.

SEC. 2. Section 8623 is added to the Water Code, to read:

8623. Notwithstanding any of the provisions of Chapter 1 (commencing with Section 12570) and Chapter 3 (commencing with Section 12800) of Part 6 of Division 6, the board may plan, design, and construct flood relief structures or weirs and other structures or facilities essential for their proper functioning in the vicinity of the Sacramento River between Big Chico Creek and the north boundary of Glenn County Levee District No. 3, as needed to assure proper division of flood flows between the river and adjacent overflow areas and to preserve the integrity of the Sacramento River Flood Control Project. No revetment of the river bank may be installed pursuant to this section except to the extent necessary to assure the proper division of flood flows as described in this section. If any revetment is required under this section, it shall be accomplished by the palisades method, unless the department finds that method is not feasible.

SEC. 3. The sum of two hundred thousand dollars ($200,000) is hereby appropriated from the Special Account for Capital Outlay to the Department of Water Resources for the support of the Cherokee Canal sediment removal project.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the levees of the Sacramento River Flood Control Project will not be jeopardized by insufficient flood water flowing into the Butte Basin to the risk of lives and property protected by the project, and to ensure the timely restoration of channel capacity for the protection of lives and property adjacent to Cherokee Canal, it is necessary that this act take effect immediately.

CHAPTER 1091

An act to amend Sections 3068.1, 3071, and 3072 of the Civil Code, and to amend Sections 11520, 22670, 22851.2, 22851.3, 22851.4, 22851.6, 22851.8, 22851.10, 22851.12, 22852, 24007, and 24007.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 3068.1 of the Civil Code is amended to read:

3068.1. (a) Every person has a lien dependent upon possession for the compensation to which the person is legally entitled for towing or storage of any vehicle subject to registration which has been authorized to be removed by a public agency. The lien is deemed to arise on the date of possession of the vehicle.

(b) If the vehicle has been determined to have a value of over three hundred dollars ($300) pursuant to Section 22670 of the Vehicle Code, but not exceeding one thousand dollars ($1,000), the lien shall be satisfied pursuant to Section 3072. Lien-sale proceedings pursuant to this chapter shall commence within 15 days of the date the lien arises. No storage shall accrue beyond the 15-day period unless lien-sale proceedings have commenced.

(c) If the vehicle has been determined to have a value exceeding one thousand dollars ($1,000) pursuant to Section 22670 of the Vehicle Code, the lien shall be satisfied pursuant to Section 3071. The storage lien may be for a period not exceeding 60 days or, if an application for an authorization to conduct a lien-sale has been filed pursuant to Section 3071 within 30 days after the lien arises, a period not exceeding 120 days.

SEC. 2. Section 3071 of the Civil Code is amended to read:

3071. (a) A lienholder shall apply to the department for the issuance of an authorization to conduct a lien sale pursuant to this section for any vehicle with a value determined to be over one thousand dollars ($1,000). A filing fee shall be charged by the department and may be recovered by the lienholder if a lien sale is conducted or if the vehicle is redeemed. The application shall be executed under penalty of perjury and shall include all of the following information:

(1) A description of the vehicle, including make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included.

(2) The names and addresses of the registered and legal owners of the vehicle, if ascertainable from the registration certificates

within the vehicle, and the name and address of any person whom the lienholder knows or reasonably should know claims an interest in the vehicle.

(3) A statement of the amount of the lien and the facts which give rise to the lien.

(b) Upon receipt of an application made pursuant to subdivision (a), the department shall do all of the following:

(1) Notify the vehicle registry agency of a foreign state of the pending lien sale, if the vehicle bears indicia of registration in that state.

(2) By certified mail, send a notice, a copy of the application, and a return envelope preaddressed to the department to the registered and legal owners at their addresses of record with the department, and to any other person whose name and address is listed in the application.

(c) The notice required pursuant to subdivision (b) shall include all of the following statements and information:

(1) An application has been made with the department for authorization to conduct a lien sale.

(2) The person has a right to a hearing in court.

(3) If a hearing in court is desired, a Declaration of Opposition form, signed under penalty of perjury, shall be signed and returned to the department within 15 days of the date that the notice required pursuant to subdivision (b) was mailed.

(4) If the Declaration of Opposition form is signed and returned to the department, the lienholder shall be allowed to sell the vehicle only if he or she obtains a court judgment or if he or she obtains a subsequent release from the declarant.

(5) If a court action is filed, the declarant shall be notified of the lawsuit at the address shown on the Declaration of Opposition form and may appear to contest the claim.

(6) The person may be liable for court costs if a judgment is entered in favor of the lienholder.

(d) If the department receives the Declaration of Opposition form in the time specified, the department shall notify the lienholder within 16 days of the receipt of the form that a lien sale shall not be conducted unless the lienholder files an action in court within 20 days of the department's notice under this subdivision. A lien sale of the vehicle shall not be conducted unless judgment is subsequently entered in favor of the lienholder or the declarant subsequently releases his or her interest in the vehicle.

(e) Service on the declarant by certified mail with return receipt requested, signed by the declarant or an authorized agent of the declarant at the address shown on the Declaration of Opposition form, shall be effective. If the lienholder has served the declarant by certified mail at the address shown on the Declaration of Opposition form and the mail has been returned unclaimed, the department may authorize the sale.

(f) Upon receipt of authorization to conduct the lien sale from the

department, the lienholder shall do all of the following:

(1) At least five days, but not more than 20 days, prior to the lien sale, not counting the day of the sale, give notice of the sale by advertising once in a newspaper of general circulation published in the county in which the vehicle is located. If there is no newspaper published in the county, notice shall be given by posting a Notice of Sale form in three of the most public places in the town in which the vehicle is located and at the place where the vehicle is to be sold for 10 consecutive days prior to and including the day of the sale.

(2) Send a Notice of Pending Lien Sale form 20 days prior to the sale but not counting the day of sale, by certified mail with return receipt requested, to each of the following:

(A) The registered and legal owners of the vehicle, if registered in this state.

(B) All persons known to have an interest in the vehicle.

(C) The department.

(g) All notices required by this section, including the notice forms prescribed by the department, shall specify the make, year model, vehicle identification number, license number, and state of registration, if available, and the specific date, exact time, and place of sale. For motorcycles, the engine number shall also be included.

(h) No lien sale shall be undertaken pursuant to this section unless the vehicle has been available for inspection at a location easily accessible to the public for at least one hour before the sale and is at the place of sale at the time and date specified on the notice of sale. Sealed bids shall not be accepted. The lienholder shall conduct the sale in a commercially reasonable manner.

(i) Within 10 days after the sale of any vehicle pursuant to this section, the legal or registered owner may redeem the vehicle upon the payment of the amount of the sale, all costs and expenses of the sale, together with interest on the sum at the rate of 12 percent per annum from the due date thereof or the date when that sum was advanced until the repayment. If the vehicle is not redeemed, all lien sale documents required by the department shall then be completed and delivered to the buyer.

SEC. 3. Section 3072 of the Civil Code is amended to read:

3072. (a) For vehicles with a value determined to be one thousand dollars ($1,000) or less, the lienholder shall apply to the department for the names and addresses of the registered and legal owners of record.

(b) The lienholder shall, immediately upon receipt of the names and addresses, send, by certified mail with return receipt requested or by United States Postal Service Certificate of Mailing, a completed Notice of Pending Lien Sale form, a blank Declaration of Opposition form, and a return envelope preaddressed to the department, to the registered owner and legal owner at their addresses of record with the department, and to any other person known to have an interest in the vehicle. The lienholder shall additionally send a copy of the completed Notice of Pending Lien Sale form to the department by

certified mail on the same day that the other notices are mailed pursuant to this subdivision.

(c) All notices to persons having an interest in the vehicle shall be signed under penalty of perjury and shall include all of the following information and statements:

(1) A description of the vehicle, including make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included.

(2) The specific date, exact time, and place of sale, which shall be set not less than 31 days, but not more than 35 days, from the date of mailing.

(3) The names and addresses of the registered and legal owners of the vehicle and any other person known to have an interest in the vehicle.

(4) All of the following statements:

(A) The amount of the lien and the facts concerning the claim which gives rise to the lien.

(B) The person has a right to a hearing in court.

(C) If a court hearing is desired, a Declaration of Opposition form, signed under penalty of perjury, shall be signed and returned to the department within 15 days of the date the Notice of Pending Lien Sale form was mailed.

(D) If the Declaration of Opposition form is signed and returned, the lienholder shall be allowed to sell the vehicle only if he or she obtains a court judgment or if he or she obtains a subsequent release from the declarant.

(E) If a court action is filed, the declarant shall be notified of the lawsuit at the address shown on the Declaration of Opposition form and may appear to contest the claim.

(F) The person may be liable for court costs if a judgment is entered in favor of the lienholder.

(d) If the department receives the completed Declaration of Opposition form within the time specified, the department shall notify the lienholder within 16 days that a lien sale shall not be conducted unless the lienholder files an action in court within 20 days of the notice and judgment is subsequently entered in favor of the lienholder or the declarant subsequently releases his or her interest in the vehicle.

(e) Service on the declarant by certified mail with return receipt requested, signed by the declarant or an authorized agent of the declarant at the address shown on the Declaration of Opposition form, shall be effective. If the lienholder has served the declarant by certified mail at the address shown on the Declaration of Opposition form and the mail has been returned unclaimed, the lienholder may proceed with the sale.

(f) At least 10 consecutive days prior to and including the day of the sale, the lienholder shall post a Notice of Pending Lien Sale form in a conspicuous place on the premises of the business office of the lienholder. The Notice of Pending Lien Sale form shall state the

specific date and exact time of the sale and description of the vehicle, including the make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included. The notice of sale shall remain posted until the sale is completed.

(g) No lien sale shall be undertaken pursuant to this section unless the vehicle has been available for inspection at a location easily accessible to the public at least one hour before the sale and is at the place of sale at the time and date specified on the notice of sale. Sealed bids shall not be accepted. The lienholder shall conduct the sale in a commercially reasonable manner. All lien sale documents required by the department shall be completed and delivered to the buyer immediately following the sale.

SEC. 4. Section 11520 of the Vehicle Code is amended to read:

11520. (a) A licensed automobile dismantler who acquired, for the purpose of dismantling, actual possession, as a transferee, of a vehicle of a type subject to registration under this code shall do all of the following:

(1) Within five calendar days, not including the day of acquisition, mail a notice of acquisition to the department at its headquarters.

(2) Within five calendar days, not including the day of acquisition, mail a copy of the notice of acquisition to the Department of Justice at its headquarters.

(3) Not begin dismantling until 10 calendar days have elapsed after mailing the notice of acquisition. In the alternative, dismantling may begin any time after the dismantler complies with paragraph (4).

(4) Deliver to the department, within 90 calendar days of the date of acquisition, the documents evidencing ownership and the license plates last issued for the vehicle. Proof that a registered or certified letter of demand for the documents was sent within 90 days of the date of acquisition to the person from whom the vehicle was acquired may be substituted for documents that cannot otherwise be obtained. A certificate of license plate destruction, when authorized by the director, may be delivered in lieu of the license plates.

(5) Maintain a business record of all vehicles acquired for dismantling. The record shall contain the name and address of the person from whom the vehicle was acquired; the date the vehicle was acquired; the license plate number last assigned to the vehicle; and a brief description of the vehicle, including its make, type, and the vehicle identification number used for registration purposes. The record required by this paragraph shall be a business record of the dismantler separate and distinct from the records maintained in those books and forms furnished by the department.

(b) Paragraphs (1) and (2) of subdivision (a), do not apply to vehicles acquired pursuant to Section 11515, 22851.2, or 22851.3 of this code or Section 3071, 3072, or 3073 of the Civil Code.

SEC. 5. Section 22670 of the Vehicle Code is amended to read:

22670. For lien sale purposes, the public agency causing the

removal of the vehicle shall determine if the estimated value of the vehicle that has been ordered removed, towed, or stored is three hundred dollars ($300) or less, over three hundred dollars ($300) but one thousand dollars ($1,000) or less, or over one thousand dollars ($1,000).

If the public agency fails or refuses to put a value on, or to estimate the value of, the vehicle within three days after the date of removal of the vehicle, the garage keeper specified in Section 22851 or the garage keeper's agent shall determine, under penalty of perjury, if the estimated value of the vehicle that has been ordered removed, towed, or stored, is three hundred dollars ($300) or less, over three hundred dollars ($300) but one thousand dollars ($1,000) or less, or over one thousand dollars ($1,000).

SEC. 6. Section 22851.2 of the Vehicle Code is amended to read:

22851.2. (a) Excepting a vehicle removed pursuant to Section 22669, if the vehicle is determined to have a value not exceeding three hundred dollars ($300) pursuant to Section 22670, the public agency which removed the vehicle shall do all of the following:

(1) Within 48 hours after removal of the vehicle, notify the Stolen Vehicle System of the Department of Justice in Sacramento of the removal.

(2) Prepare and give to the lienholder a report which includes all of the following:

(A) The value of the vehicle estimated pursuant to Section 22670.

(B) The identification of the estimator.

(C) The location of the vehicle.

(D) A description of the vehicle, including the make, year model, identification number, license number, state of registration, and, if a motorcycle, an engine number.

(E) The statutory authority for storage.

(b) If the vehicle is in such condition that there is no means of determining ownership, the public agency which removed the vehicle may give authorization to dispose of the vehicle. If no authorization for disposal is issued, a vehicle identification number shall be assigned prior to commencing the lien sale proceedings.

SEC. 7. Section 22851.3 of the Vehicle Code is amended to read:

22851.3. Whenever a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any other employee of a public agency authorized pursuant to Section 22669, removes, or causes the removal of, a vehicle pursuant to Section 22669 and the public agency or, at the request of the public agency, the lienholder determines the estimated value of the vehicle is three hundred dollars ($300) or less, the public agency which removed, or caused the removal of, the vehicle shall cause the disposal of the vehicle under this section, subject to all of the following requirements:

(a) Not less than 72 hours before the vehicle is removed, the peace officer or the authorized public employee has securely attached to the vehicle a distinctive notice which states that the vehicle will be

removed by the public agency.

(b) Immediately after removal of the vehicle, the public agency which removed, or caused the removal of, the vehicle shall notify the Stolen Vehicle System of the Department of Justice in Sacramento of the removal.

(c) The public agency which removed, or caused the removal of, the vehicle or, at the request of the public agency, the lienholder shall obtain a copy of the names and addresses of all persons having an interest in the vehicle, if any, from the Department of Motor Vehicles either directly or by use of the California Law Enforcement Telecommunications System. This subdivision does not require the public agency or lienholder to obtain a copy of the actual record on file at the Department of Motor Vehicles.

(d) Within 48 hours of the removal, excluding weekends and holidays, the public agency which removed, or caused the removal of, the vehicle or, at the request of the public agency, the lienholder shall send a notice to the registered and legal owners at their addresses of record with the Department of Motor Vehicles, and to any other person known to have an interest in the vehicle. A notice sent by the public agency shall be sent by certified or first-class mail, and a notice sent by the lienholder shall be sent by certified mail. The notice shall include all of the following information:

(1) The name, address, and telephone number of the public agency providing the notice.

(2) The location of the place of storage and description of the vehicle which shall include, if available, the vehicle make, license plate number, vehicle identification number, and mileage.

(3) The authority and purpose for the removal of the vehicle.

(4) A statement that the vehicle will be disposed of 15 days from the date of the notice.

(5) A statement that the owners and interested persons, or their agents, have the opportunity for a poststorage hearing before the public agency which removed, or caused the removal of, the vehicle to determine the validity of the storage if a request for a hearing is made in person, in writing, or by telephone within 10 days from the date of notice; that, if the owner or interested person, or his or her agent, disagree with the decision of the public agency, the decision may be reviewed pursuant to Section 11523 of the Government Code; and that during the time of the initial hearing, or during the time the decision is being reviewed pursuant to Section 11523 of the Government Code, the vehicle in question shall not be disposed of.

(e) (1) Any requested hearings shall be conducted within 48 hours of the request, excluding weekends and holidays. The public agency which removed the vehicle may authorize its own officers to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle.

(2) Failure of either the registered or legal owner or interested person, or his or her agent, to request or to attend a scheduled hearing shall satisfy the poststorage validity hearing requirement of

this section.

(f) The public agency employing the person, or utilizing the services of a contractor or franchiser pursuant to subdivision (b) of Section 22669, which removed, or caused the removal of, the vehicle and which directed any towing or storage, shall be responsible for the costs incurred for towing and storage if it is determined in the hearing that reasonable grounds to believe that the vehicle was abandoned are not established.

(g) No authorization for disposal may be issued by the public agency which removed, or caused the removal of, the vehicle to a lienholder who is storing the vehicle prior to the conclusion of a requested poststorage hearing or any judicial review of that hearing.

(h) If, after 15 days from the notification date, the vehicle remains unclaimed and the towing and storage fees have not been paid, and if no request for a poststorage hearing was requested or a poststorage hearing was not attended, the public agency which removed, or caused the removal of, the vehicle shall provide to the lienholder who is storing the vehicle, on a form approved by the Department of Motor Vehicles, authorization to dispose of the vehicle. The lienholder may request the public agency to provide the authorization to dispose of the vehicle.

(i) If the vehicle is claimed by the owner or his or her agent within 15 days of the notice date, the lienholder who is storing the vehicle may collect reasonable fees for services rendered, but may not collect lien sale fees as provided in Section 22851.12.

(j) Disposal of the vehicle by the lienholder who is storing the vehicle may only be to a licensed dismantler or scrap iron processor. A copy of the public agency's authorization for disposal shall be forwarded to the licensed dismantler within five days of disposal to a licensed dismantler. A copy of the public agency's authorization for disposal shall be retained by the lienholder who stored the vehicle for a period of 90 days if the vehicle is disposed of to a scrap iron processor.

(k) If the names and addresses of the registered and legal owners of the vehicle are not available from the records of the Department of Motor Vehicles, either directly or by use of the California Law Enforcement Telecommunications System, the public agency may issue to the lienholder who stored the vehicle an authorization for disposal at any time after the removal.

The lienholder may request the public agency to issue an authorization for disposal after the lienholder ascertains that the names and addresses of the registered and legal owners of the vehicle are not available from the records of the Department of Motor Vehicles either directly or by use of the California Law Enforcement Telecommunications System.

(*l*) A vehicle disposed of pursuant to this section shall not be reconstructed or made operable, unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates, pursuant to Section 5004, in which case the vehicle may be

reconstructed or made operable.

SEC. 8. Section 22851.3 of the Vehicle Code is amended to read:

22851.3. Whenever a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any other employee of a public agency authorized pursuant to Section 22669, removes, or causes the removal of, a vehicle pursuant to Section 22669 and the public agency or, at the request of the public agency, the lienholder determines the estimated value of the vehicle is three hundred dollars ($300) or less, the public agency which removed, or caused the removal of, the vehicle shall cause the disposal of the vehicle under this section, subject to all of the following requirements:

(a) Not less than 72 hours before the vehicle is removed, the peace officer or the authorized public employee has securely attached to the vehicle a distinctive notice which states that the vehicle will be removed by the public agency. This subdivision does not apply to abandoned vehicles removed pursuant to subdivision (d) of Section 22669 which are determined by the public agency to have an estimated value of one hundred dollars ($100) or less.

(b) Immediately after removal of the vehicle, the public agency which removed, or caused the removal of, the vehicle shall notify the Stolen Vehicle System of the Department of Justice in Sacramento of the removal.

(c) The public agency which removed, or caused the removal of, the vehicle or, at the request of the public agency, the lienholder shall obtain a copy of the names and addresses of all persons having an interest in the vehicle, if any, from the Department of Motor Vehicles either directly or by use of the California Law Enforcement Telecommunications System. This subdivision does not require the public agency or lienholder to obtain a copy of the actual record on file at the Department of Motor Vehicles.

(d) Within 48 hours of the removal, excluding weekends and holidays, the public agency which removed, or caused the removal of, the vehicle or, at the request of the public agency, the lienholder shall send a notice to the registered and legal owners at their addresses of record with the Department of Motor Vehicles, and to any other person known to have an interest in the vehicle. A notice sent by the public agency shall be sent by certified or first-class mail, and a notice sent by the lienholder shall be sent by certified mail. The notice shall include all of the following information:

(1) The name, address, and telephone number of the public agency providing the notice.

(2) The location of the place of storage and description of the vehicle which shall include, if available, the vehicle make, license plate number, vehicle identification number, and mileage.

(3) The authority and purpose for the removal of the vehicle.

(4) A statement that the vehicle will be disposed of 15 days from the date of the notice.

(5) A statement that the owners and interested persons, or their

agents, have the opportunity for a poststorage hearing before the public agency which removed, or caused the removal of, the vehicle to determine the validity of the storage if a request for a hearing is made in person, in writing, or by telephone within 10 days from the date of notice; that, if the owner or interested person, or his or her agent, disagrees with the decision of the public agency, the decision may be reviewed pursuant to Section 11523 of the Government Code; and that during the time of the initial hearing, or during the time the decision is being reviewed pursuant to Section 11523 of the Government Code, the vehicle in question shall not be disposed of.

(e) (1) Any requested hearings shall be conducted within 48 hours of the request, excluding weekends and holidays. The public agency which removed the vehicle may authorize its own officers to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle.

(2) Failure of either the registered or legal owner or interested person, or his or her agent, to request or to attend a scheduled hearing shall satisfy the poststorage validity hearing requirement of this section.

(f) The public agency employing the person, or utilizing the services of a contractor or franchiser pursuant to subdivision (b) of Section 22669, which removed, or caused the removal of, the vehicle and which directed any towing or storage, shall be responsible for the costs incurred for towing and storage if it is determined in the hearing that reasonable grounds to believe that the vehicle was abandoned are not established.

(g) No authorization for disposal may be issued by the public agency which removed, or caused the removal of, the vehicle to a lienholder who is storing the vehicle prior to the conclusion of a requested poststorage hearing or any judicial review of that hearing.

(h) If, after 15 days from the notification date, the vehicle remains unclaimed and the towing and storage fees have not been paid, and if no request for a poststorage hearing was requested or a poststorage hearing was not attended, the public agency which removed, or caused the removal of, the vehicle shall provide to the lienholder who is storing the vehicle, on a form approved by the Department of Motor Vehicles, authorization to dispose of the vehicle. The lienholder may request the public agency to provide the authorization to dispose of the vehicle.

(i) If the vehicle is claimed by the owner or his or her agent within 15 days of the notice date, the lienholder who is storing the vehicle may collect reasonable fees for services rendered, but may not collect lien sale fees as provided in Section 22851.12.

(j) Disposal of the vehicle by the lienholder who is storing the vehicle may only be to a licensed dismantler or scrap iron processor. A copy of the public agency's authorization for disposal shall be forwarded to the licensed dismantler within five days of disposal to a licensed dismantler. A copy of the public agency's authorization for disposal shall be retained by the lienholder who stored the vehicle

for a period of 90 days if the vehicle is disposed of to a scrap iron processor.

(k) If the names and addresses of the registered and legal owners of the vehicle are not available from the records of the Department of Motor Vehicles, either directly or by use of the California Law Enforcement Telecommunications System, the public agency may issue to the lienholder who stored the vehicle an authorization for disposal at any time after the removal.

The lienholder may request the public agency to issue an authorization for disposal after the lienholder ascertains that the names and addresses of the registered and legal owners of the vehicle are not available from the records of the Department of Motor Vehicles either directly or by use of the California Law Enforcement Telecommunications System.

(*l*) A vehicle disposed of pursuant to this section shall not be reconstructed or made operable, unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates, pursuant to Section 5004, in which case the vehicle may be reconstructed or made operable.

SEC. 9. Section 22851.4 of the Vehicle Code is amended to read:

22851.4. If the vehicle is determined to have a value exceeding three hundred dollars ($300) pursuant to Section 22670, the lien shall be satisfied pursuant to Sections 3067 to 3075, inclusive, of the Civil Code.

SEC. 10. Section 22851.6 of the Vehicle Code is amended to read:

22851.6. (a) Lienholders who acquire a vehicle subject to Section 22851.2 shall satisfy their lien pursuant to Sections 22851.8 and 22851.10 if the vehicle has a value not exceeding three hundred dollars ($300) as determined pursuant to Section 22670.

(b) All forms required by Sections 22851.8 and 22851.10 shall be prescribed by the Department of Motor Vehicles. The language used in the notices and declarations shall be simple and nontechnical.

SEC. 11. Section 22851.8 of the Vehicle Code is amended to read:

22851.8. (a) The lienholders shall, within 15 working days following the date of possession of the vehicle, make a request to the Department of Motor Vehicles for the names and addresses of all persons having an interest in the vehicle. No storage charge shall accrue beyond the 15-day period unless the lienholder has made a request to the Department of Motor Vehicles as provided for in this section.

(b) By certified mail with return receipt requested or by United States Postal Service Certificate of Mailing, the lienholder shall immediately, upon receipt of this information, send the following prescribed forms and enclosures to the registered owner and legal owner at their addresses of record with the Department of Motor Vehicles, and to any other person known to have an interest in the vehicle:

(1) A completed form entitled "Notice of Intent to Dispose of a Vehicle Valued at $300 or Less."

(2) A blank form entitled "Declaration of Opposition."

(3) A return envelope preaddressed to the lienholder.

(c) All notices to persons having an interest in the vehicle shall be signed under penalty of perjury and shall include all of the following:

(1) A description of the vehicle, including make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included.

(2) The names and addresses of the registered and legal owners of the vehicle and any other person known to have an interest in the vehicle.

(3) The following statements and information:

(A) The amount of the lien.

(B) The facts concerning the claim which gives rise to the lien.

(C) The person has a right to a hearing in court.

(D) If a hearing in court is desired, a Declaration of Opposition form shall be signed under penalty of perjury and returned to the lienholder within 10 days of the date the notice form specified in paragraph (1) of subdivision (b) was mailed.

(E) If the Declaration of Opposition form is signed and mailed, the lienholder shall be allowed to dispose of the vehicle only if the lienholder obtains a court judgment or a subsequent release from the declarant.

(F) If a court action is filed, the declarant shall be notified of the lawsuit at the address shown on the Declaration of Opposition form, and the declarant may appear to contest the claim.

(G) The declarant may be liable for court costs if a judgment is entered in favor of the lienholder.

(4) A statement that the lienholder may dispose of the vehicle to a licensed dismantler or scrap iron processor if it is not redeemed or if a Declaration of Opposition form is not signed and mailed to the lienholder within 10 days of the date the notice form specified in paragraph (1) of subdivision (b) was mailed.

(d) If the lienholder receives a completed Declaration of Opposition form within the time prescribed, the vehicle shall not be disposed of unless the lienholder files an action in court within 20 days of the date the notice form specified in paragraph (1) of subdivision (b) was mailed and a judgment is subsequently entered in favor of the lienholder or unless the declarant subsequently releases his or her interest in the vehicle.

(e) Service on the declarant by certified mail, return receipt requested, which receipt is signed by the addressee at the address shown on the Declaration of Opposition form, shall be effective. If the lienholder has served the declarant by certified mail at the address shown on the Declaration of Opposition form and the mail has been returned unclaimed, the lienholder may proceed with the disposal of the vehicle. The proof of service shall be submitted to the Department of Motor Vehicles with the documents specified in Section 22851.10.

SEC. 12. Section 22851.10 of the Vehicle Code is amended to read:

22851.10. (a) Any vehicle determined to have a value not exceeding three hundred dollars ($300) pursuant to Section 22670 which was stored pursuant to this chapter, and which remains unclaimed, or for which reasonable towing and storage charges remain unpaid, shall be disposed of only to a licensed dismantler or scrap iron processor not earlier than 15 days after the date the notice form required pursuant to paragraph (1) of subdivision (b) of Section 22851.8 was mailed, unless a Declaration of Opposition form has been signed and returned to the lienholder.

(b) If the vehicle has been disposed of to a licensed dismantler or scrap iron processor, the lienholder shall forward the following forms and information to the licensed dismantler or scrap iron processor within five days:

(1) A statement, signed under penalty of perjury, that a properly executed Declaration of Opposition form was not received.

(2) A copy of the notice sent to all interested parties.

(3) A certification from the public agency which made the determination of value pursuant to Section 22670.

(4) The proof of service pursuant to subdivision (e) of Section 22851.8 or a copy of the court judgment, if any in favor of the lienholder entered pursuant to subdivision (d) of Section 22851.8.

(5) The name, address, and telephone number of the licensed dismantler or scrap iron processor who received the vehicle.

(6) The amount the lienholder received for the vehicle.

(c) A vehicle disposed of pursuant to this section shall not be reconstructed or made operable, unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates, pursuant to Section 5004, in which case the vehicle may be reconstructed or made operable.

SEC. 13. Section 22851.12 of the Vehicle Code is amended to read:

22851.12. The lienholder may recover actual costs incurred in the processing for disposal of any vehicle of a value determined to be three hundred dollars ($300) or less pursuant to Section 22670, not to exceed fifty dollars ($50), from any person who redeems the vehicle prior to disposal. These costs may commence when the lienholder requests the names and addresses of all persons having an interest in the vehicle from the Department of Motor Vehicles.

SEC. 14. Section 22852 of the Vehicle Code is amended to read:

22852. (a) Whenever an authorized member of a public agency directs the storage of a vehicle, as permitted by this chapter, or upon the storage of any vehicle as permitted herein (except as provided in subdivision (f) or (g)), the agency or person directing the storage shall provide the vehicle's registered and legal owners of record, or their agents, with the opportunity for a poststorage hearing to determine the validity of the storage.

(b) A notice of the storage shall be mailed or personally delivered to the registered and legal owners within 48 hours, excluding weekends and holidays, and shall include all of the following information:

(1) The name, address, and telephone number of the agency providing the notice.

(2) The location of the place of storage and description of the vehicle, which shall include, if available, the name or make, the manufacturer, the license plate number, and the mileage.

(3) The authority and purpose for the removal of the vehicle.

(4) A statement that, in order to receive their poststorage hearing, the owners, or their agents, shall request the hearing in person, writing, or by telephone within 10 days of the date appearing on the notice.

(c) The poststorage hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The public agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle.

(d) Failure of either the registered or legal owner, or his or her agent, to request or to attend a scheduled hearing shall satisfy the poststorage hearing requirement.

(e) The agency employing the person who directed the storage shall be responsible for the costs incurred for towing and storage if it is determined in the poststorage hearing that reasonable grounds for the storage are not established.

(f) This section does not apply to vehicles abated under the Abandoned Vehicle Abatement Program pursuant to Sections 22660 to 22668, inclusive, and Section 22710, or to vehicles impounded for investigation pursuant to Section 22655, or to vehicles removed from private property pursuant to Section 22658.

(g) This section does not apply to abandoned vehicles removed pursuant to Section 22669 which are determined by the public agency to have an estimated value of three hundred dollars ($300) or less.

SEC. 15. Section 24007 of the Vehicle Code is amended to read:

24007. (a) No dealer or person holding a retail seller's permit shall sell a new or used vehicle which is not in compliance with this code and departmental regulations adopted pursuant to this code, unless the vehicle is (1) sold to another dealer, (2) sold for the purpose of being wrecked or dismantled, or (3) sold exclusively for off-highway use.

(b) Except as provided in Section 24007.5, no person shall sell, or offer or deliver for sale, to the ultimate purchaser a new or used motor vehicle, as those terms are defined in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code, subject to Part 5 (commencing with Section 43000) of that Division 26 which is not in compliance with that Part 5 and the rules and regulations of the State Air Resources Board, unless the vehicle is either (1) sold to a dealer, or (2) sold for the purpose of being wrecked or dismantled.

(c) (1) With each application for initial registration of a new motor vehicle or transfer of registration of a motor vehicle subject

to that Part 5, a dealer shall transmit to the Department of Motor Vehicles a valid certificate of compliance from a licensed motor vehicle pollution control device installation and inspection station indicating that the vehicle is properly equipped with a certified device or devices which are in proper operating condition and which are in compliance with that Part 5 and the rules and regulations of the state board.

(2) With respect to new vehicles certified pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code, a dealer may transmit, in lieu of a certificate of compliance, a statement, in a form and containing information deemed necessary and appropriate by the Director of Motor Vehicles and the Executive Officer of the State Air Resources Board, to attest to the vehicles compliance with that Chapter 2. The statement shall be certified under penalty of perjury, and shall be signed by the dealer or the dealer's authorized representative.

SEC. 16. Section 24007.5 of the Vehicle Code is amended to read:

24007.5. (a) Except as otherwise provided in subdivisions (c), (d), and (e), no auctioneer or public agency shall sell, at public auction, any vehicle specified in subdivision (a) of Section 24007, which is not in compliance with this code, unless the vehicle is sold to a dealer or for the purpose of being wrecked or dismantled or is sold exclusively for off-highway use.

(b) Except as otherwise provided in subdivision (e), any auctioneer or public agency which sells, at public auction, any vehicle specified in subdivision (b) of Section 24007, shall provide each bidder with a notice in writing that a certificate of compliance is required to be obtained, certifying that the vehicle complies with Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, before the vehicle may be registered in this state, unless the vehicle is sold to a dealer or for the purpose of being wrecked or dismantled or is sold exclusively for off-highway use.

(c) If, in the opinion of an auctioneer or public agency, the cost of repairs to a vehicle exceeds the value of the vehicle to the auctioneer or agency, the auctioneer or agency shall, as transferee or owner, surrender the certificates of registration, documents satisfactory to the department showing proof of ownership, and any unexpired license plates issued for the vehicle to the Department of Motor Vehicles.

(d) The auctioneer or agency having complied with subdivision (c) shall, upon sale of the vehicle, give to the purchaser a bill of sale which includes, in addition to any other required information, the last issued license plate number.

(e) Subdivisions (a) and (b) do not apply to any judicial sale conducted pursuant to a writ of execution or order of court.

(f) The exceptions in this section do not apply to any requirements for registration of a vehicle pursuant to Section 4000.1, 4000.2, or 4000.3.

SEC. 17. Section 8 of this bill incorporates amendments to Section

22851.5 of the Vehicle Code proposed by both this bill and SB 1132. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 22851.5 of the Vehicle Code, and (3) this bill is enacted after SB 1132, in which case Section 7 of this bill shall not become operative.

CHAPTER 1092

An act to add Section 1566.8 to, and to amend Sections 1566.2, 1566.3, 1569.84, and 1569.85 of, the Health and Safety Code, and to amend Section 15200 of the Welfare and Institutions Code, relating to public social services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1987. Filed with Secretary of State September 24, 1987.]

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

SECTION 1. Section 1566.2 of the Health and Safety Code is amended to read:

1566.2. A residential facility, which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject. Nothing in this section shall be construed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by Section 1566.3, local bond assessments, and other fees, charges, and assessments to which other family dwellings of the same type in the same zone are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee for enforcing fire inspection regulations pursuant to state law or regulation or local ordinance, with respect to residential facilities which serve six or fewer persons.

For the purposes of this section, "family dwellings," includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments.

SEC. 2. Section 1566.3 of the Health and Safety Code is amended to read:

1566.3. Whether or not unrelated persons are living together, a residential facility which serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant

to this article.

For the purpose of all local ordinances, a residential facility which serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or the mentally infirm, foster care home, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the residential facility is a business run for profit or differs in any other way from a family dwelling.

This section shall not be construed to forbid any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a residential facility which serves six or fewer persons as long as such restrictions are identical to those applied to other family dwellings of the same type in the same zone.

This section shall not be construed to forbid the application to a residential care facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity if the ordinance does not distinguish residential care facilities which serve six or fewer persons from other family dwellings of the same type in the same zone; and if the ordinance does not distinguish residents of the residential care facilities from persons who reside in other family dwellings of the same type in the same zone.

No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential facility which serves six or fewer persons which is not required of a family dwelling of the same type in the same zone.

Use of a family dwelling for purposes of a residential facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent such sections are applicable to residential facilities providing care for six or fewer residents.

For the purposes of this section, "family dwelling," includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments.

SEC. 3. Section 1566.8 is added to the Health and Safety Code, to read:

1566.8. Notwithstanding any other provision of law, if according to the rules and regulations of a mobilehome park, the park is designated as a family park or a section of a mixed mobilehome park is designated as a family section, no rule, regulation, rental agreement, or any other provision in existence on the effective date of this section shall, directly or indirectly, prohibit a person from operating in any mobilehome in a family park or designated family

section, a licensed foster family home.

SEC. 4. Section 1569.84 of the Health and Safety Code is amended to read:

1569.84. A residential care facility for the elderly, which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject. Nothing in this section shall be construed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by Section 1569.85, local bond assessments, and other fees, charges, and assessments to which other family dwellings of the same type in the same zone are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee for enforcing fire inspection regulations pursuant to state law or regulation or local ordinance, with respect to residential care facilities for the elderly which service six or fewer persons.

For the purposes of this section, "family dwelling," includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments.

SEC. 5. Section 1569.85 of the Health and Safety Code is amended to read:

1569.85. Whether or not unrelated persons are living together, a residential care facility for the elderly which serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article.

For the purpose of all local ordinances, a residential care facility for the elderly which serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution or home for the care of the aged, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the residential care facility for the elderly is a business run for profit or differs in any other way from a family dwelling.

This section shall not be construed to forbid any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a residential care facility for the elderly which serves six or fewer persons as long as the restrictions are identical to those applied to other family dwellings of the same type in the same zone.

This section shall not be construed to forbid the application to a residential care facility for the elderly of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a

local public entity if the ordinance does not distinguish residential care facilities for the elderly which serve six or fewer persons from other family dwellings of the same type in the same zone; and if the ordinance does not distinguish residents of the residential care facilities for the elderly from persons who reside in other family dwellings of the same type in the same zone.

No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential care facility for the elderly which serves six or fewer persons which is not required of a family dwelling of the same type in the same zone.

Use of a family dwelling for purposes of a residential care facility for the elderly serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent these sections are applicable to residential care facilities for the elderly providing care for six or fewer residents.

For the purposes of this section, "family dwelling," includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments.

SEC. 6. Section 15200 of the Welfare and Institutions Code, as amended by Section 1 of Chapter 1426 of the Statutes of 1985, is amended to read:

15200. There is hereby appropriated out of any money in the State Treasury not otherwise appropriated, and after deducting available federal funds, the following sums:

(a) To each county for the support and maintenance of needy children, 89.2 percent of the sums specified in subdivision (a), and paragraphs (1) and (2) of subdivision (e), of Section 11450.

(b) To each county for the support and maintenance of pregnant mothers, 89.2 percent of the sums specified in subdivisions (b) and (c) of Section 11450.

(c) To each county for the support and maintenance of needy children, 95 percent of the sum necessary for the adequate care of each child pursuant to subdivision (d) of Section 11450 for the period July 1, 1979, to June 30, 1990.

(d) To each county for the support and care of hard-to-place adoptive children, 100 percent of the nonfederal share of the amount specified in Section 16121.

(e) This section shall be repealed July 1, 1990.

SEC. 7. Section 15200 of the Welfare and Institutions Code, as amended by Section 6 of Chapter 1490 of the Statutes of 1986, is amended to read:

15200. There is hereby appropriated out of any money in the State Treasury not otherwise appropriated, and after deducting available federal funds, the following sums:

(a) To each county for the support and maintenance of needy children, 89.2 percent of the sums specified in subdivision (a), and paragraphs (1) and (2) of subdivision (e) of Section 11450.

(b) To each county for the support and maintenance of pregnant mothers, 89.2 percent of the sums specified in subdivisions (b) and (c) of Section 11450.

(c) To each county for the support and maintenance of needy children, 95 percent of the sum necessary for the adequate care of each child pursuant to subdivision (d) of Section 11450 for the period July 1, 1979, to June 30, 1990.

(d) To each county for the support and care of hard-to-place adoptive children, 100 percent of the nonfederal share of the amount specified in Section 16121.

(e) To each county for the support of families and children, 50 percent of all benefits provided in Section 11023, subject to the limitation on county share provided in Sections 10100 and 10101.

(f) This section shall remain in effect only until July 1, 1990, and as of that date is repealed, unless a later enacted statute which is chaptered before July 1, 1990, deletes or extends that date.

SEC. 8. Section 15200 of the Welfare and Institutions Code, as amended by Section 2 of Chapter 1426 of the Statute of 1985, is amended to read:

15200. There is hereby appropriated out of any money in the State Treasury not otherwise appropriated, and after deducting federal funds available, the following sums:

(a) To each county for the support and maintenance of needy children, 89.2 percent of the sums specified in subdivision (a), and paragraphs (1) and (2) of subdivision (e), of Section 11450.

(b) To each county for the support and maintenance of pregnant mothers, 89.2 percent of the sum specified in subdivisions (b) and (c) of Section 11450.

(c) To each county for the adequate care of each child pursuant to subdivision (d) of Section 11450 the following amounts:

(1) The sum necessary for the adequate care of each child but not to exceed in any month the product of one hundred twenty dollars ($120) multiplied by the number of children in each county receiving foster care. The state shall pay 67.5 percent and the county shall pay 32.5 percent of the aid furnished for the adequate care of such children.

(2) The state shall reimburse counties for the nonfederal costs of providing an additional twelve dollars and fifty cents ($12.50) a month per eligible child to foster parents. In addition the state may, at its discretion, pay on a pro rata basis from funds specifically appropriated in the Budget Act additional aid for the adequate care of foster children receiving aid under subdivision (d) of Section 11450.

The financial benefit accruing from the additional funds available under this paragraph shall be passed on to foster parents in order to more adequately reimburse foster parents for their expense, and to

enable counties to more readily recruit and retain a selection of homes suited to the diversified needs of the individual child, and the counties shall not substitute the additional state funds received under this paragraph for county funds being expended for foster care at the time when this section takes effect.

(d) To each county for the support and care of hard-to-place adoptive children, 100 percent of the nonfederal share of the amount specified in Section 16121.

(e) This section shall become operative on July 1, 1990.

SEC. 9. Section 15200 of the Welfare and Institutions Code, as amended by Section 7 of Chapter 1490 of the Statutes of 1986, is amended to read:

15200. There is hereby appropriated out of any money in the State Treasury not otherwise appropriated, and after deducting federal funds available, the following sums:

(a) To each county for the support and maintenance of needy children, 89.2 percent of the sums specified in subdivision (a), and paragraphs (1) and (2) of subdivision (e), of Section 11450.

(b) To each county for the support and maintenance of pregnant mothers, 89.2 percent of the sum specified in subdivisions (b) and (c) of Section 11450.

(c) To each county for the adequate care of each child pursuant to subdivision (d) of Section 11450 the following amounts:

(1) The sum necessary for the adequate care of each child but not to exceed in any month the product of one hundred twenty dollars ($120) multiplied by the number of children in each county receiving foster care. The state shall pay 67.5 percent and the county shall pay 32.5 percent of the aid furnished for the adequate care of such children.

(2) The state shall reimburse counties for the nonfederal costs of providing an additional twelve dollars and fifty cents ($12.50) a month per eligible child to foster parents. In addition the state may, at its discretion, pay on a pro rata basis from funds specifically appropriated in the Budget Act additional aid for the adequate care of foster children receiving aid under subdivision (d) of Section 11450.

The financial benefit accruing from the additional funds available under this paragraph shall be passed on to foster parents in order to more adequately reimburse foster parents for their expense, and to enable counties to more readily recruit and retain a selection of homes suited to the diversified needs of the individual child, and the counties shall not substitute the additional state funds received under this paragraph for county funds being expended for foster care at the time when this section takes effect.

(d) To each county for the support and care of hard-to-place adoptive children, 100 percent of the nonfederal share of the amount specified in Section 16121.

(e) To each county for the support of families and children, 50 percent of all benefits provided in Section 11023, subject to the

limitation on county share provided in Sections 10100 and 10101.

(f) This section shall become operative on July 1, 1990.

SEC. 10. By January 1, 1989, the Health and Welfare Agency shall submit a report to the policy and fiscal committees of the Legislature, dealing with answers to the following questions:

(a) How much discretion do counties have to determine the number and costs of foster care placements?

(b) Are the counties providing adequate preplacement preventive and family reunification services to abused and neglected children, in order to avoid out-of-home placement costs?

(c) Is there any relationship between the quality of child welfare services provided by counties and the county share of foster care costs?

(d) To what extent, if any, does placement in foster care result in savings to other state and local funded programs, such as state hospitals and juvenile detention facilities?

The report shall also contain recommendations for funding of child welfare services and the foster care program, based on findings presented in the report.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the availability of sufficient foster family homes, it is necessary that this act take effect immediately.

CHAPTER 1093

An act to amend Section 9701 of, and to add Sections 9719.5 and 9720.5 to, the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 9701 of the Welfare and Institutions Code is amended to read:

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,

whether licensed or unlicensed.

(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.

(5) Any residential care facility for the elderly as defined in subdivisions (i) and (j) of Section 1569.2 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, medical records technician, physician's assistant, or discharge planner.

(h) "Ombudsman coordinator" means the individual selected by the governing board or executive director of the approved organization to manage the day-to-day operation of the ombudsman program, including the implementation of federal and state requirements governing the office.

SEC. 2. Section 9719.5 is added to the Welfare and Institutions Code, to read:

9719.5. The department shall allocate all federal and state funds for local ombudsman programs according to the following distribution, but shall not allocate less than thirty-five thousand dollars ($35,000) per fiscal year, except for an area where there are less than 10 facilities and less than 500 beds. An allocation to an area where there are less than 10 facilities and less than 500 beds shall not be less than the base allocation contained in the Budget Act of 1986. After the base allocation, remaining funds shall be distributed as follows:

(a) Fifty percent of the funds shall be allocated to each local program based on the number of facilities served by the program in proportion to the total number of facilities in the state.

(b) Forty percent of the funds shall be allocated based on the number of beds within the local program's area of service in proportion to the total number of beds in the state.

(c) Ten percent of the funds shall be allocated based on the total square miles within each local program's area of service in

proportion to the total number of square miles in the state.

SEC. 3. Section 9720.5 is added to the Welfare and Institutions Code, to read:

9720.5. The office shall give priority to investigations and complaint resolutions in 24-hour long-term care facilities.

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 adequately fund local ombudsman programs to investigate instances of elder and dependent adult abuse, prevent suffering of senior citizens, and effectively address existing statutory responsibilities, as soon as possible, it is necessary that this act go into immediate effect.

CHAPTER 1094

An act to amend Section 61 of the Revenue and Taxation Code, relating to property taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 61 of the Revenue and Taxation Code is amended to read:

61. Except as otherwise provided in Section 62, change in ownership, as defined in Section 60, includes, but is not limited to:

(a) The creation, renewal, sublease, assignment, or other transfer of the right to produce or extract oil, gas, or other minerals regardless of the period during which the right may be exercised. The balance of the property, other than the mineral rights, shall not be reappraised pursuant to this section.

(b) The creation, renewal, sublease, or assignment of a taxable possessory interest in tax exempt real property for any term. For purposes of this subdivision, "renewal" does not include the granting of an option to renew an existing agreement pursuant to which the term of possession of the existing agreement would, upon exercise of the option, be lengthened, whether the option is granted in the original agreement or subsequent thereto.

(c) (1) The creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options), the termination of a leasehold interest in taxable real property which had an original term of 35 years or more (including renewal options), and any transfer of a leasehold interest having a remaining term of 35 years or more (including renewal options); or (2) any transfer of

a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of less than 35 years.

Only that portion of a property subject to such lease or transfer shall be considered to have undergone a change of ownership.

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 have a renewal option of at least 35 years on the lease of such land, whether or not in fact such renewal option exists in any contract or agreement.

(d) The creation, transfer, or termination of any joint tenancy interest, except as provided in subdivision (f) of Section 62, Section 63 and Section 65.

(e) The creation, transfer, or termination of any tenancy-in-common interest, except as provided in subdivision (a) of Section 62 and in Section 63.

(f) Any vesting of the right to possession or enjoyment of a remainder or reversionary interest which occurs upon the termination of a life estate or other similar precedent property interest, except as provided in subdivision (d) of Section 62 and in Section 63.

(g) Any interests in real property which vest in persons other than the trustor (or, pursuant to Section 63, his or her spouse) when a revocable trust becomes irrevocable.

(h) The transfer of stock of a cooperative housing corporation, vested with legal title to real property which conveys to the transferee the exclusive right to occupancy and possession of such property, or a portion thereof. A "cooperative housing corporation" is a real estate development in which membership in the corporation, by stock ownership, is coupled with the exclusive right to possess a portion of the real property.

(i) The transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person.

SEC. 2. The amendment to Section 61 of the Revenue and Taxation Code made by this act does not constitute a change in, but is declaratory of, the existing law.

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:

There exists at present some ambiguity with respect to the reassessment of certain real property transactions involving the renewal of a taxable possessory interest in tax exempt real property. In order that the clarification of this ambiguity made by this act may enable assessors to properly evaluate these real property transactions at the earliest time possible, it is necessary that this act go into immediate effect.

CHAPTER 1095

An act to amend Section 6354 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 6354 of the Revenue and Taxation Code is amended to read:

6354. There are exempted from the taxes imposed by this part, the gross receipts from the sales of commemorative "California Gold" medallions produced and sold in accordance with Chapter 25 (commencing with Section 7551) of Division 7 of Title 1 of the Government Code, and the storage, use, or other consumption in this state of commemorative "California Gold" medallions so produced and sold.

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.

CHAPTER 1096

An act to amend Section 19617 of the Business and Professions Code, relating to horseracing.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 19617 of the Business and Professions Code is amended to read:

19617. (a) Any association conducting a thoroughbred racing meeting shall, at the end of the meeting, deposit 0.34 percent of the total amount handled in daily conventional and exotic parimutuel pools with the official registering agency of California-bred thoroughbred racehorses as designated by the board.

(b) The official registering agency shall distribute the funds pursuant to Section 19567 to the breeders of California-bred

thoroughbred horses becoming entitled thereto at the thoroughbred racing meeting, except that a breeder of a thoroughbred horse winning a race in this state shall be paid a sum equal to 15 percent of the respective share of the purse, and the breeder of a thoroughbred horse placing second or third in a race in this state shall be paid a sum equal to 10 percent of the respective share of the purse, in each case, exclusive of nomination, entry, or starting fees. A breeder of a California-bred thoroughbred winning, or placing second or third in, a graded stakes race outside the State of California shall be paid a sum equal to 10 percent of the respective share of the purse, exclusive of nomination, entry, and starting fees, with a maximum awards of fifteen thousand dollars ($15,000) for a win, five thousand dollars ($5,000) for a second place, and four thousand dollars ($4,000) for a third place.

(c) Following the close of each meeting the official registering agency shall pay an owners' premium award of up to 5 percent of the winner's share of the purse, exclusive of nomination, entry, or starting fees, to the owner of a California-bred thoroughbred horse winning a race other than a claiming race at a racing meeting in this state, or a claiming race in the central and southern zones when the total purse exceeds the daily average purse in races, excluding stakes, distributed at that meeting during the prior year, or a claiming race in the northern zone when the total purse exceeds 125 percent of the daily average purse in races, excluding stakes, distributed at that meeting during the prior year. This payment shall be supplemented by the funds paid pursuant to subdivision (b) of Section 19611.5, except that the combined owner's premium award shall not exceed 20 percent for any one race.

(d) At the end of the fiscal year, the balance of the fund shall be distributed by the official registering agency as stallion awards. Stallion awards shall be made on a prorated percentage based on the share of the purse, exclusive of nomination, entry, or starting fees, to the owner of a sire of California-conceived thoroughbred horses which finish first, second, or third in one or more stakes races at a racing meeting in this state or which win one or more races other than claiming races at a racing meeting in this state, or a claiming race in the central or southern zone when the total purse exceeds the daily average purse in races, excluding stakes, distributed at that meeting during the prior year, or a claiming race in the northern zone when the total purse exceeds 125 percent of the daily average purse in races, excluding stakes, distributed at that meeting during the prior year, and, in the case of California-conceived thoroughbreds finishing first, second, or third in a graded stakes race outside the State of California, a prorated award shall be made to the owner of the sire, with a maximum award of fifteen thousand dollars ($15,000) for winning any one race, a maximum award of five thousand dollars ($5,000) for finishing second, and a maximum award of four thousand dollars ($4,000) for finishing third. To be eligible for benefits for a given year, a stallion shall have been in California at

least from January 15 to July 15, inclusive, of that year. At the end of the year in which benefits are earned, it is the responsibility of the stallion owner to advise the official registering agency of any qualifying races for other than a California-bred thoroughbred horse. The awards shall not be made to the owner of a stallion which has been out of the state for breeding purposes during the calendar year.

(e) The maximum amount payable to the owner of a California stallion eligible for stallion awards for any one race shall be 3 percent of the total stallion awards fund for the year during which that race was run.

(f) The official registering agency shall make a deduction for administration and expenses for educational, promotional, and research programs not to exceed 5 percent of the total awards fund, with the deductions having to be approved by the board, which shall report annually to the Governor and Legislature with respect to the distributions.

(g) 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 associations to fund the deficiencies.

CHAPTER 1097

An act to amend Section 5602 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 5602 of the Vehicle Code is amended to read:

5602. An owner who has made a bona fide sale or transfer of a vehicle and has delivered possession thereof to a purchaser is not, by reason of any of the provisions of this code, the owner of the vehicle so as to be subject to civil liability or criminal liability for the parking, abandoning, or operation of the vehicle thereafter by another when the selling or transferring owner, in addition to that delivery and that bona fide sale or transfer has fulfilled both of the following requirements:

(a) He or she has made proper endorsement and delivery of the certificate of ownership and delivered the certificate of registration as provided in this code.

(b) He or she has delivered to the department or has placed in the United States mail, addressed to the department, either the notice as provided in Section 5900 or Section 5901 or appropriate documents and fees for registration of the vehicle to the new owner pursuant to the sale or transfer.

(c) A violation of this section is an infraction punishable by a fine of not less than twenty-five dollars ($25), nor more than seventy-five dollars ($75).

CHAPTER 1098

An act to amend Section 25123.3 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 25123.3 of the Health and Safety Code, as amended by Chapter 293 of the Statutes of 1987, is amended to read:

25123.3. (a) "Storage facility" means a hazardous waste facility at which the hazardous waste meets any of the following requirements:

(1) The hazardous waste is contained for periods greater than 90 days at an onsite facility.

(2) The hazardous waste is contained in tanks or accumulated in waste piles for any period of time and the quantities of the hazardous waste exceed 5,000 gallons or 45,000 pounds, whichever is greater. For purposes of this paragraph, these quantities do not include hazardous waste stored in a portable tank used for a period of not more than 60 calendar days at an onsite facility or hazardous waste accumulated onsite which has been generated from onsite maintenance operations which occur less frequently than annually.

(3) The hazardous waste is contained for any period of time at an offsite facility which is not a transfer facility.

(4) The hazardous waste is contained at a transfer facility for periods greater than 144 hours.

(b) The time period for calculating the 90-day period for purposes of paragraph (1) of subdivision (a) begins when the facility has accumulated 100 kilograms of hazardous waste or 1 kilogram of extremely hazardous waste, except that, if the facility generates more than 100 kilograms of hazardous waste or 1 kilogram of extremely hazardous waste during any calendar month, the time period begins when any amount of hazardous waste first begins to accumulate.

(c) For purposes of this section, "transfer facility" means any offsite facility which is related to the transportation of hazardous waste, including, but not limited to, loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(d) (1) Notwithstanding subdivision (a), a generator which accumulates hazardous waste or acutely hazardous waste onsite is

not a storage facility if both of the following conditions are met:

(A) The generator meets all of the conditions of, and complies with, all of the requirements of subsection (c) of Section 262.34 of Title 40 of the Code of Federal Regulations.

(B) The hazardous waste or acutely hazardous waste is not stored more than one year from the initial date of accumulation.

(2) For purposes of this subdivision, "acutely hazardous waste" means a hazardous waste listed in subsection (e) of Section 261.33 of Title 40 of the Code of Federal Regulations.

CHAPTER 1099

An act relating to hazardous substances, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1987 Filed with Secretary of State September 25, 1987.]

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

SECTION 1. (a) Notwithstanding any other provision of law, including, but not limited to, Section 25317 of the Health and Safety Code, the State Department of Health Services may take the actions specified in this section.

(b) The State Department of Health Services may take, or contract for, the actions specified in paragraphs (1) and (2) of subdivision (b) of Section 25358.3 of the Health and Safety Code, to determine whether a release or threatened release of hazardous waste at Oxnard Dunes, or the land immediately contiguous thereto, in the County of Ventura, poses a substantial present or potential hazard to human health or the environment.

(c) If, on the basis of the actions taken pursuant to subdivision (b), the State Department of Health Services determines that there exists a substantial present or potential hazard to human health or the environment because of a release or threatened release of hazardous wastes at Oxnard Dunes, or the land immediately contiguous thereto, in the County of Ventura, the site is subject to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, and the State Department of Health Services may take or contract for a removal or remedial action.

(d) The State Department of Health Services may, pursuant to Section 25334.5 of the Health and Safety Code, expend the funds in the Hazardous Substance Account established pursuant to Section 25330 of the Health and Safety Code or the Hazardous Substance Cleanup Fund established pursuant to Section 25385.6 of the Health and Safety Code, to pay all costs incurred pursuant to subdivisions (b) and (c) to the extent the costs are not paid by a responsible party

under an order issued, or an enforceable agreement entered into, pursuant to subdivision (a) of Section 25355.5 of the Health and Safety Code. The State Department of Health Services shall recover any costs incurred and payable from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund pursuant to Article 6 (commencing with Section 25360) of Chapter 6.8 of Division 20 of the Health and Safety Code.

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

In order to expeditiously resolve uncertainties concerning the existence of a substantial present or the potential hazard to human health or the environment and to expeditiously determine whether removal or remedial action may be necessary at Oxnard Dunes, it is necessary that this act take effect immediately.

CHAPTER 1100

An act to amend Sections 51500, 51501, and 60044, of the Education Code, relating to education.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 51500 of the Education Code is amended to read:

51500. No teacher shall give instruction nor shall a school district sponsor any activity which reflects adversely upon persons because of their race, sex, color, creed, handicap, national origin, or ancestry.

SEC. 2. Section 51501 of the Education Code is amended to read:

51501. No textbook, or other instructional materials shall be adopted by the state board or by any governing board for use in the public schools which contains any matter reflecting adversely upon persons because of their race, sex, color, creed, handicap, national origin, or ancestry.

SEC. 3. Section 60044 of the Education Code is amended to read:

60044. No instructional materials shall be adopted by any governing board for use in the schools which, in its determination, contains:

(a) Any matter reflecting adversely upon persons because of their race, color, creed, national origin, ancestry, sex, handicap, or occupation.

(b) Any sectarian or denominational doctrine or propaganda contrary to law.

SEC. 4. No reimbursement shall be made from the State

Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 1101

An act to amend Section 311.8 of the Penal Code, and to amend and repeal Section 2884 of the Public Utilities Code, relating to telephones.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 311.8 of the Penal Code is amended to read:

311.8. (a) It shall be a defense in any prosecution for a violation of this chapter that the act charged was committed in aid of legitimate scientific or educational purposes.

(b) It shall be a defense in any prosecution for a violation of this chapter by a person who knowingly distributed any obscene matter by the use of telephones or telephone facilities to any person under the age of 18 years that the defendant has taken either of the following measures to restrict access to the obscene matter by persons under 18 years of age:

(1) Required the person receiving the obscene matter to use an authorized access or identification code, as provided by the information provider, before transmission of the obscene matter begins, where the defendant has previously issued the code by mailing it to the applicant therefor after taking reasonable measures to ascertain that the applicant was 18 years of age or older and has established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of 18 years or that the code is no longer desired.

(2) Required payment by credit card before transmission of the matter.

(c) Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with subdivision (b) is confidential and shall not be sold or otherwise disseminated except upon order of the court.

SEC. 2. Section 2884 of the Public Utilities Code is amended to read:

2884. (a) The commission shall, pursuant to its existing authority, by rule or order, establish procedures governing telephone

corporation billing practices and operations to require every telephone corporation, on and after July 1, 1986, or on and after another date or dates which the commission finds and determines to be appropriate and feasible with respect to the capability of particular telephone equipment, to offer residential subscribers the option of deleting access to a class of information-access telephone service, commonly referred to as "976 service," whereby recorded commercial, informational, or public service messages, interactive computer programs, and other services, are furnished for a charge, in addition to the basic local exchange charge, to the person calling. The commission shall specify a method or methods for telephone corporations to institute this deletion of access option for residential subscribers, taking into consideration the operational requirements of the various types of telephone equipment in use throughout the state. The commission shall further establish a charge to the subscriber, of not to exceed five dollars ($5), for the exercise of this option, and the commission shall require that any unrecompensed expenses in this regard be borne by providers of information-access telephone services rather than residential telephone subscribers.

(b) The commission shall require telephone corporations and providers of information-access telephone services to institute a method of handling subscriber complaints concerning these services, which shall include provision for a waiver of certain or all of the charges for these services for a first occasion of their inadvertent or mistaken use.

This section shall become inoperative on July 1, 1991, and, as of January 1, 1992, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1992, deletes or extends the date on which it becomes inoperative and is repealed.

CHAPTER 1102

An act to amend Sections 1799.2 and 1799.4 of the Health and Safety Code, relating to emergency medical services.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 1799.2 of the Health and Safety Code is amended to read:

1799.2. The commission shall consist of 15 members appointed as follows:

(a) One full-time physician and surgeon, whose primary practice is emergency medicine, appointed by the Senate Rules Committee from a list of three names submitted by the California Chapter of the American College of Emergency Physicians.

(b) One physician and surgeon, who is a trauma surgeon, appointed by the Speaker of the Assembly from a list of three names submitted by the California Chapter of the American College of Surgeons.

(c) One physician and surgeon appointed by the Senate Rules Committee from a list of three names submitted by the California Medical Association.

(d) One county health officer appointed by the Governor from a list of three names submitted by the California Conference of Local Health Officers.

(e) One registered nurse, who is currently, or has been previously, authorized as a mobile intensive care nurse and who is knowledgeable in state emergency medical services programs and issues, appointed by the Governor from a list of three names submitted by the Emergency Nurses Association.

(f) One full-time paramedic or EMT-II, who is not employed as a full-time peace officer, appointed by the Senate Rules Committee from a list of three names submitted by the California Rescue and Paramedic Association.

(g) One prehospital emergency medical service provider from the private sector, appointed by the Speaker of the Assembly from a list of three names submitted by the California Ambulance Association.

(h) One management member of an entity providing fire protection and prevention services appointed by the Governor from a list of three names submitted by the California Fire Chiefs Association.

(i) One physician and surgeon who is board eligible or board certified in the specialty of emergency medicine by the American Board of Emergency Medicine and who is knowledgeable in state emergency medical services programs and issues appointed by the Speaker of the Assembly.

(j) One hospital administrator of a base hospital who is appointed by the Governor from a list of three names submitted by the California Hospital Association.

(k) One full-time peace officer, who is either an EMT-II or a paramedic, who is appointed by the Governor from a list of three names submitted by the California Peace Officers Association.

(*l*) Two public members who have experience in local EMS policy issues, at least one of whom resides in a rural area as defined by the authority, and who are appointed by the Governor.

(m) One administrator from a local EMS agency appointed by the Governor from a list of four names submitted jointly by the Northern California EMS Administrators Association and the Southern California EMS Administrators Association.

(n) One medical director of a local EMS agency who is an active member of the Emergency Medical Directors Association of California and who is appointed by the Governor.

SEC. 3. Section 1799.4 of the Health and Safety Code is amended

to read:

1799.4. (a) Except as otherwise provided in this section, the terms of the members of the commission shall be three calendar years, commencing January 1 of the year of appointment. No member shall serve more than two consecutive full terms; provided, however, that a term or part of a term served pursuant to paragraph (1) or (2) of subdivision (b) shall not be included in this limitation.

(b) (1) The first members appointed on or after January 1, 1985, pursuant to subdivisions (a), (b), (c), and (d) of Section 1799.2 shall serve from the date of appointment to the end of that calendar year, plus one additional year.

(2) The first members appointed on or after January 1, 1985, pursuant to subdivisions (e), (f), (g), (h), and (i) of Section 1799.2 shall serve from the date of appointment to the end of that calendar year, plus two additional years.

(3) The first members appointed on or after January 1, 1985, pursuant to subdivisions (j), (k), and (m) of Section 1799.2 shall be from the date of appointment to the end of that calendar year, plus three additional years.

(4) The first member appointed on or after January 1, 1985, pursuant to subdivision (*l*) of Section 1799.2 shall serve from the date of appointment to the end of that calendar year, plus one additional year, and the second member shall serve from the date of appointment to the end of that calendar year, plus two additional years.

(5) The first member appointed pursuant to subdivision (n) of Section 1799.2 shall serve from the date of appointment to the end of the 1991 calendar year.

(6) It is the purpose of this subdivision to provide for staggered terms for the members of the commission.

CHAPTER 1103

An act to add and repeal Section 6373 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 6373 is added to the Revenue and Taxation Code, to read:

6373. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of tangible personal property the gross receipts of which are received in the form of food stamp coupons acquired by the purchaser pursuant to the Food Stamp Act of 1977

(Public Law 95-113), including subsequent amendments thereto.

(b) When the gross receipts from a sale of tangible personal property are received partly in the form of cash and partly in the form of food stamp coupons, the amount of the food stamp coupons shall be attributed first to gross receipts which would have been subject to the taxes imposed by this part if payment were not received in the form of food stamps.

(c) A retailer shall not add to the sale price of tangible personal property any amount designated as sales tax, use tax, or sales tax reimbursement when the sale is exempt pursuant to this section.

(d) In lieu of separately accounting for gross receipts which are exempt pursuant to this section and taking a deduction on sales tax returns for the exact amount of those gross receipts, a retailer may take a deduction on each sales tax return equal to two percent of the total amount of food stamp coupons redeemed during the period for which the return is filed.

(e) This section is repealed on the first day of the first calendar month immediately following the effective date of any federal act which repeals those provisions which prohibit any state from participating in the food stamp program if sales taxes are imposed within that state on purchases made with food stamp coupons.

SEC. 2. On or before January 1, 1990, the State Board of Equalization shall recommend to the Legislature whether the percentage specified in subdivision (d) of Section 6373 of the Revenue and Taxation Code for sales tax reporting purposes should be changed to reflect more accurately the amount of gross receipts which are exempted by that section.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, this act shall become operative on October 1, 1987.

CHAPTER 1104

An act to amend Section 24045.7 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 24045.7 of the Business and Professions Code is amended to read:

24045.7. (a) The department may issue a special on-sale general

license to any nonprofit theater company which has been in existence for at least 10 years and which is exempt from the payment of income taxes under the provisions of Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of the United States.

Theater companies holding a license under this section may, subject to Section 25631, sell and serve alcoholic beverages to ticketholders only during, and one hour prior to and one hour after, a bona fide theater performance of the company.

An applicant for such a license shall accompany the application with an original issuance fee of one thousand dollars ($1,000) and shall pay an annual renewal fee as provided in subdivision (30) of Section 23320.

(b) The department may issue a special on-sale beer and wine license to any nonprofit theater company which has been in existence for at least eight years, which for at least six years has performed in facilities leased or rented from a local county fair association, and which is exempt from the payment of income taxes under the provisions of Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of the United States.

Theater companies holding a license under this subdivision may, subject to Section 25631, sell and serve beer and wine to ticketholders only during, and one hour prior to, a bona fide theater performance of the company. Beer and wine may be sold from an open-air concession stand which is not attached to the theater building itself, provided that the concession stand is located on fair association property within 30 feet of the theater building, and provided that alcoholic beverages sold shall be consumed only in the theater building itself, or within a designated outdoor area in front of and between the concession stand and the main public entrance to the theater building. Nothing in this section permits a theater company to sell beer or wine during the run of a county fair.

An applicant for a license under this subdivision shall accompany the application with an original issuance fee equal to the annual renewal fee and shall pay an annual renewal fee as provided in subdivision (23) of Section 23320.

CHAPTER 1105

An act to add Section 4511.5 to the Food and Agricultural Code, relating to fairs.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987]

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

SECTION 1. Section 4511.5 is added to the Food and Agricultural Code, to read:

4511.5. If carnival incident or accident records are required as conditions to contracts between carnival contractors and district agricultural associations, county fairs, or citrus fruit fairs, the department shall maintain and review carnival contractor's accident reports submitted by the Division of Occupational Safety and Health in the Department of Industrial Relations to the department and disseminate information regarding these reports to district agricultural associations, county fairs, and citrus fruit fairs.

CHAPTER 1106

An act to amend Sections 1166, 1167, 1168, 1172, and 1173 of the Health and Safety Code, and to amend Section 5705.2 of the Welfare and Institutions Code, relating to health.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 1166 of the Health and Safety Code is amended to read:

1166. Notwithstanding any provisions of law to the contrary, all services delivered by the county participating in a pilot project pursuant to this article or its subcontractors under the Medical Assistance Program, Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code may be reimbursed at a negotiated rate or net amount that shall be fixed and based on projected levels of utilization. The method of calculating the rate or net amount shall be negotiated between the California Medical Assistance Commission and the pilot county electing to participate under this article, and shall be binding on the state department for the purposes of this pilot project. A single, countywide rate or net amount shall be negotiated for hospital inpatient, hospital skilled nursing, skilled nursing facility, and

outpatient clinic services provided by the pilot county. Rates or net amounts shall be renegotiated annually, and shall be retroactive to the beginning of the fiscal year to which they apply.

SEC. 2. Section 1167 of the Health and Safety Code is amended to read:

1167. Contracts negotiated pursuant to Section 1162 shall be negotiated by October 15 of the fiscal year to which they apply and shall be retroactive to July 1 of that fiscal year. The first contract may commence July 1, 1986. If the state department and the pilot county cannot reach agreement by October 15 for any given year, negotiations are terminated, and the county shall be paid at the prior year's negotiated rate adjusted to reflect the medical component of the cost-of-living increase for the previous fiscal year for the Standard Metropolitan Statistical Area in which the county is located for the remainder of that annual year (July 1 through December 31). The county terminating from the pilot project shall thereafter revert to reimbursement formulas existing outside of this article. Either party terminating under this section shall provide the other with 30 days' advance written notification. Contracts may be renegotiated during the year as may be necessary to reflect substantial changes in any element of the services described in the contract, pursuant to the procedures specified in subdivision (i) of Section 1162.

SEC. 3. Section 1168 of the Health and Safety Code is amended to read:

1168. Reimbursements under this contracting procedure shall be monthly in advance, in amounts which are as nearly equal to one another as possible.

SEC. 4. Section 1172 of the Health and Safety Code is amended to read:

1172. The department shall submit an evaluation report to the Legislature by June 30, 1990, regarding the effectiveness of the pilot program in meeting the objectives of this article in accordance with the article.

SEC. 5. Section 1173 of the Health and Safety Code is amended to read:

1173. This article shall remain in effect only until June 30, 1990, and as of that date is repealed, unless a later enacted statute, which is chaptered before that date deletes or extends that date.

SEC. 6. Section 5705.2 of the Welfare and Institutions Code, as amended by Section 2 of Chapter 1080 of the Statutes of 1985, is amended to read:

5705.2. (a) It is the intent of the Legislature that the use of negotiated net amounts or rates, as provided in subdivision (b), be given preference in contracts for services under this division.

(b) Negotiated net amounts or rates may be used as the cost of services only in accordance with the following provisions:

(1) A negotiated net amount shall be determined by calculating the total budget for services for a program or a component of a program, less the amount of projected revenue. This net amount

shall be negotiated between the provider of services and the county mental health program, and may be used by providers in contracts with the county. The negotiated net amount shall be submitted to the State Department of Mental Health prior to the commencement date of the contract. No contract shall become final until the State Department of Mental Health has approved the net amount. If approval is received after the commencement date of the contract, the approval shall be retroactive to the commencement date. Should the negotiated net amount be disapproved after the commencement date of the contract, the provider shall be compensated for work performed pursuant to the contract in accordance with Section 5705. Once the negotiated net amount is approved by the State Department of Mental Health, all participating government funding sources, except for the Medi-Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9), shall be bound to that amount as the cost of providing all or part of the total county mental health program as described in the county Short-Doyle plan for each fiscal year to the extent that the governmental funding source participates in funding the county mental health program. Where the State Department of Health Services promulgates regulations for determining reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program, those regulations shall be controlling only as to the rates for reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program and rendered to Medi-Cal beneficiaries. Providers under this subdivision shall report to the State Department of Mental Health and the local mental health program any information required by the State Department of Mental Health in accordance with procedures established by the Director of Mental Health. Contracts entered into pursuant to this paragraph shall be financed within an approved Short-Doyle plan or contract.

Notwithstanding any other provision of this division or Division 9 (commencing with Section 10000), absent a finding of fraud, abuse, or failure to achieve contract objectives, no restrictions, other than any contained in the contract, shall be placed upon a provider's expenditure or retention funds received pursuant to this paragraph.

(2) A negotiated rate is the payment for services delivered on a per unit of service basis. This rate shall be negotiated between the provider of services and the county mental health program. The negotiated rate shall be submitted to the State Department of Mental Health prior to the commencement date of the contract. No contract shall become final until the State Department of Mental Health has approved the rate. If approval is received after the commencement date of the contract, the approval shall be retroactive to the commencement date. Should the negotiated rate be disapproved after the commencement date of the contract, the provider shall be compensated for work performed pursuant to the contract in accordance with Section 5705. Once this rate is approved by the State Department of Mental Health, all participating

governmental funding shall be bound by that amount as the cost of providing that service for that county mental health program to the extent that the governmental funding source participates in funding the county mental health program. Where the State Department of Health Services promulgates regulations for determining reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program, those regulations shall be controlling only as to the rates for reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program and rendered to Medi-Cal beneficiaries. Providers under this subdivision shall report to the State Department of Mental Health and the local mental health program any information required by the State Department of Mental Health in accordance with procedures established by the Director of Mental Health.

Notwithstanding any other provision of this division or Division 9 (commencing with Section 10000), absent a finding of fraud, abuse, or failure to achieve contract objectives, no restrictions, other than any contained in the contract, shall be placed upon a provider's expenditure or retention of funds received pursuant to this paragraph.

(c) The director may negotiate net amount contracts between counties and the State Department of Mental Health in lieu of the Short-Doyle plan and budgets. Provisions of the contract shall include at least all of the following:

(1) Assurance of an adequate quality and quantity of services.

(2) Provision for access to services by patients residing within the contracting county.

(3) Statistical and cost reporting necessary to maintain the statewide mental health data base. For the purpose of verifying the conformance to provisions of the contract and the establishment of data necessary for subsequent contract negotiation, the State Department of Mental Health shall have access to financial and service records.

(4) A method for reimbursing the State Department of Mental Health for state hospital obligations incurred by the county.

(5) Assurance that citizen participation as described in Section 5606 will be achieved.

(6) A negotiated net amount contract shall not preclude the county from subcontracting to purchase all or part of the delivery of mental health services from noncounty providers.

(7) Assurance that all funds paid out by the state under this subdivision shall be used exclusively for the purpose of providing mental health services, which shall include, but not be limited to, defraying operating and capital costs.

Contracts entered into under this subdivision shall be subject to all the provisions of subdivisions (a) and (b), but shall be exempt from the requirements contained in the Public Contract Code and the State Administrative Manual, and shall be exempt from approval by the Department of General Services.

(d) It is not the intent of the Legislature to preclude counties from reimbursing providers by using methods other than those in this section when these counties are part of a Short-Doyle and Medi-Cal consolidation program established pursuant to Article 5 (commencing with Section 14660) of Chapter 8.8 of Part 3 of Division 9.

(e) Counties that propose to negotiate rate or net amount contracts with the State Department of Mental Health pursuant to subdivision (c) in lieu of the Short-Doyle annual plan shall inform the Mental Health Advisory Board of its intentions in the following ways:

(1) Prior to opening of negotiations, the local program director shall submit to the board an outline of issues to be negotiated and the intended agreement on each issue.

(2) At each regular meeting of the board, during the period of negotiations, the local program director shall inform the board of progress on each issue and shall request the board's advice on how to further proceed on the negotiations.

(f) The county shall bear the financial risk in providing any and all mental health services to the population described and enumerated in the approved contract within the net amount.

(g) By April 1, 1989, the State Department of Mental Health shall submit to the Legislature an evaluation of the extent to which the objectives of negotiated net amount contracts have been met, including, but not limited to:

(1) Increased use of less restrictive treatment alternatives.

(2) Decreased rates compared to rates for similar services provided in counties that remain under the actual cost-reimbursement methodology.

(3) Quality and quantity of services and access to services equal to or better than the quality and quantity of services provided prior to negotiating the net amount contract.

(4) Reduction of state hospital utilization.

(h) This section shall remain in effect only until July 1, 1991, and as of such date is repealed, unless a later enacted statute, which is chaptered before July 1, 1991, deletes or extends such date.

SEC. 7. Section 5705.2 of the Welfare and Institutions Code, as amended by Section 3 of Chapter 1080 of the Statutes of 1985, is amended to read:

5705.2. (a) It is the intent of the Legislature that the use of negotiated net amounts or rates, as provided in subdivision (b), be given preference in contracts for services under this division.

(b) Negotiated net amounts or rates may be used as the cost of services only in accordance with the following provisions:

(1) A negotiated net amount shall be determined by calculating the total budget for services for a program or a component of a program, less the amount of projected revenue. This net amount shall be negotiated between the provider of services and the county mental health program, and may be used by providers in contracts with the county. The negotiated net amount shall be submitted to

the State Department of Mental Health prior to the commencement date of the contract. No contract shall become final until the State Department of Mental Health has approved the net amount. If approval is received after the commencement date of the contract, the provider shall be compensated for work performed pursuant to the contract in accordance with Section 5705. Once the negotiated net amount is approved by the State Department of Mental Health, all participating government funding sources, except for the Medi-Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9), shall be bound to that amount as the cost of providing all or part of the total county mental health program as described in the county Short-Doyle plan for each fiscal year to the extent that the governmental funding source participates in funding the county mental health program. Where the State Department of Health Services promulgates regulations for determining reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program, those regulations shall be controlling only as to the rates for reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program and rendered to Medi-Cal beneficiaries. Providers under this subdivision shall report to the State Department of Mental Health and the local mental health program any information required by the State Department of Mental Health in accordance with procedures established by the Director of Mental Health. Contracts entered into pursuant to this paragraph shall be financed within an approved Short-Doyle plan or contract.

Notwithstanding any other provision of this division or Division 9 (commencing with Section 10000), absent a finding of fraud, abuse, or failure to achieve contract objectives, no restrictions, other than any contained in the contract, shall be placed upon a provider's expenditure or retention of funds received pursuant to this paragraph.

(2) A negotiated rate is the payment for services delivered on a per unit of service basis. This rate shall be negotiated between the provider of services and the county mental health program. The negotiated rate shall be submitted to the State Department of Mental Health prior to the commencement date of the contract. No contract shall become final until the State Department of Mental Health has approved the rate. If approval is received after the commencement date of the contract, the approval shall be retroactive to the commencement date of the contract, the provider shall be compensated for work performed pursuant to the contract in accordance with Section 5705. Once this rate is approved by the State Department of Mental Health, all participating governmental funding sources shall be bound by that amount as the cost of providing that service for that county mental health program to the extent that the governmental funding source participates in funding the county mental health program. Where the State Department of Health Services promulgates regulations for determining

reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program, those regulations shall be controlling only as to the rates for reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program and rendered to Medi-Cal beneficiaries. Providers under this subdivision shall report to the State Department of Mental Health and the local mental health program any information required by the State Department of Mental Health in accordance with procedures established by the Director of Mental Health.

Notwithstanding any other provision of this division or Division 9 (commencing with Section 10000), absent a finding of fraud, abuse, or failure to achieve contract objectives, no restrictions, other than any contained in the contract, shall be placed upon a provider's expenditure or retention of funds received pursuant to this paragraph.

This section shall become operative July 1, 1991.

CHAPTER 1107

An act to add Section 5751.7 to the Welfare and Institutions Code, relating to mental health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 5751.7 is added to the Welfare and Institutions Code, to read:

5751.7. For the purposes of this part and the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000)), the department shall ensure that, whenever feasible, minors shall not be admitted into psychiatric treatment with adults if the health facility has no specific separate housing arrangements, treatment staff, and treatment programs designed to serve children or adolescents. The director shall provide waivers to counties, upon their request, if this policy creates undue hardship in any county due to inadequate or unavailable alternative resources. In granting the waivers, the director shall require the county to establish specific treatment protocols and administrative procedures for identifying and providing appropriate treatment to minors admitted with adults.

However, notwithstanding any other provision of law, no minor may be admitted for psychiatric treatment into the same treatment ward as any adult receiving treatment who is in the custody of any jailor for a violent crime, is a known registered sex offender, or has a known history of, or exhibits inappropriate, sexual, or other violent behavior which would present a threat to the physical safety of

minors.

SEC. 2. The State Department of Health Services shall survey all licensed acute care hospitals to gather all of the following information:

(a) The numbers of minors, ages 0 to 14, inclusive, and ages 14 to 18, inclusive, receiving psychiatric treatment.

(b) The treatment programs in these facilities, how many minors are in distinct programs designed and staffed for minors, and how many minors receive treatment in programs designed and staffed for minors as well as adults.

The department shall report the information gathered under this section to the Governor and the Legislature no later than January 1, 1990.

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:

Because children, even as young as five years old, are being held in adult psychiatric wards where they cannot receive the treatment they need, it is necessary that this act take immediate effect.

CHAPTER 1108

An act to amend Sections 1030 and 1032 of the Unemployment Insurance Code, relating to unemployment compensation.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987]

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

SECTION 1. Section 1030 of the Unemployment Insurance Code is amended to read:

1030. (a) Any employer who is entitled under Section 1327 to receive notice of the filing of a new or additional claim may, within 10 days after mailing of the notice, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or was discharged from the employment for misconduct connected with his or her work, or whether the discharge or quit from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages, or whether the claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period, or whether the claimant left the employer's employ to accompany his or her spouse to or join her or him at a place from which it is impractical to commute to the employment, to which a transfer of the claimant

by the employer is not available, and at which the spouse has secured employment. The period during which the employer may submit these facts may be extended by the director for good cause.

(b) Any base period employer who is not entitled under Section 1327 to receive notice of the filing of a new or additional claim and is entitled under Section 1329 to receive notice of computation may, within 15 days after mailing of the notice of computation, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or was discharged from the employment for misconduct connected with his or her work, or whether the claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period, or whether the claimant left the employer's employ to accompany his or her spouse to or join her or him at a place from which it is impractical to commute to the employment, to which a transfer of the claimant by the employer is not available, and at which the spouse has secured employment. The period during which the employer may submit such facts may be extended by the director for good cause.

(c) The department shall consider these facts together with any information in its possession. If the employer is entitled to a ruling under subdivision (b) or to a determination under Section 1328, the department shall promptly notify the employer of its ruling as to the cause of the termination of the claimant's employment. The employer may appeal from a ruling or reconsidered ruling to an administrative law judge within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day period may be extended for good cause, which shall include, but not be limited to, mistake, inadvertence, surprise, or excusable neglect. The director shall be an interested party to any appeal. The department may for good cause reconsider any ruling or reconsidered ruling within either five days after the date an appeal to an administrative law judge is filed or, if no appeal is filed, within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling, except that any ruling or reconsidered ruling which relates to a determination which is reconsidered pursuant to subdivision (a) of Section 1332 may also be reconsidered by the department within the time provided for reconsideration of such determination.

(d) For purposes of this section only, if the claimant voluntarily leaves the employer's employ without notification to the employer of the reasons therefor, and if the employer submits all of the facts within its possession concerning the leaving within the applicable time period referred to in this section, the leaving shall be presumed to be without good cause.

(e) An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party shall not be deemed to

have voluntarily left his or her employment without good cause.

SEC. 2. Section 1032 of the Unemployment Insurance Code is amended to read:

1032. If it is ruled under Section 1030 or 1328 that the claimant left the employer's employ voluntarily and without good cause or was discharged by reason of misconduct connected with his or her work, or that he or she was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period, or that he or she left the employer's employ to accompany his or her spouse to or join her or him at a place from which it is impractical to commute to such employment, to which a transfer of the claimant by the employer is not available, and at which the spouse has secured employment, benefits paid to the claimant subsequent to the termination of employment due to such voluntary leaving or discharge, or due to the termination of the temporary employment of a student whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period, or due to the termination of employment caused by the leaving to accompany or join a spouse, or if it is shown the claimant's discharge or quit from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages, which are based upon wages earned from the employer prior to the date of such termination of employment, shall not be charged to the account of such employer, except as provided by Section 1026, unless he or she failed to furnish the information specified in Section 1030 within the time limit prescribed in that section or unless such ruling is reversed by a reconsidered ruling.

CHAPTER 1109

An act to amend Sections 91502.1, 91503, 91505, 91527, 91530, 91531, 91535, 91537.5, 91538, 91549, and 91573 of, to add Section 91558 to, and to repeal and add Section 91504 of, the Government Code, relating to industrial development, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 91502.1 of the Government Code is amended to read:

91502.1. (a) The Legislature declares that it is the policy of this state, consistent with environmental, resource conservation, and other policies, to facilitate for and on behalf of private enterprise the acquisition of property, either suitable for or evidencing an

obligation respecting any one or more of the activities or uses set forth in Section 91503, through the issuance of revenue bonds by authorities in accordance with the criteria set forth in subdivision (b), and that this additional method of financing when made available in accordance with that policy serves a public purpose and will promote the prosperity, health, safety, and welfare of the citizens of the State of California.

(b) The Legislature declares that the criteria to be utilized to determine whether this method of financing may be made available shall include the following:

(1) Whether employment benefits arising out of the use of the facilities may ensue by securing or increasing (A) the number of employees of the company and any other direct users of the facilities or (B) compensation for that employment, the value of which may be expressed in terms of aggregate direct employment earnings.

(2) Whether energy, mineral or natural or cultivated resource conservation benefits arising out of the use of the facilities may ensue by the reduction of waste, improvement of recovery or intensification of utilization of resources that otherwise would be less intensively utilized, or wasted, or not recovered, the value of which may be expressed in terms of the price and amount of the energy, minerals, or other resources saved or recovered, or the price and amount of equivalent energy, minerals, or other resources which would be utilized were the resources not utilized as intensively.

(3) Whether consumer benefits arising out of the use of the facilities may ensue by any of the following:

(A) Improvement of the quantity or quality or reduction in the price of products, energy, or related services or facilities, the value of which may be expressed in terms of quantity and price differentials.

(B) Production of new or improved products, or related services or facilities, the value of which may be expressed in terms of quantity and price.

(C) The transfer of ownership of a business or place of work which has closed or is in danger of closing, to its employees for the purpose of formation of an employee-owned corporation, as defined by subdivision (c).

(c) For purposes of this section, "employee-owned corporation" means a corporation which is under employee ownership. "Employee ownership" means the majority ownership of a business in this state by a majority of its employees under either of the following methods:

(1) Establishment of an Employee Stock Ownership Plan (ESOP) pursuant to the federal Employee Retirement Income and Security Act (ERISA). All stock initially issued at the time of formation of the employee-owned corporation shall be allocated to the employees and become fully vested within five years of the date the employee-owned corporation begins operation. Voting rights of the employees are established in accordance with Section 409A(e) of the

Internal Revenue Code as effective on January 1, 1983.

(2) Establishment of a worker-owned cooperative.

SEC. 2. Section 91503 of the Government Code is amended to read:

91503. The property acquired pursuant to this article shall be suitable for, or shall evidence an obligation respecting, certain activities or uses. The activities or uses shall include one or more of the activities or uses described in subdivision (a) and, unless incidental to those activities or uses, shall not include any of the activities described in, and not excepted from, subdivision (b).

(a) (1) Industrial uses including, without limitation, assembling, fabricating, manufacturing, processing, or warehousing activities with respect to any products of agriculture, forestry, mining, or manufacture, if these activities have demonstrated job creation or retention potential.

(2) Energy development, production, collection, or conversion from one form of energy to another.

(3) Research and development activities relating to commerce or industry, including, without limitation, professional, administrative, and scientific office and laboratory activities or uses.

(b) (1) Residential real property for family unit or other housing activities.

(2) Airport, dock, wharf, or mass commuting activities, or storage or training activities related to any thereof.

(3) Sewage or solid waste disposal activities or electric energy or gas furnishing activities, unless the property acquired is suitable for one or more of the activities described in paragraph (2) of subdivision (a) and is not described in Section 142(f) of the Internal Revenue Code of 1986, as amended.

(4) Water furnishing activities.

(5) Any activities of persons qualifying as exempt persons under Section 501 of the Internal Revenue Code of 1986, as amended, undertaken by those persons, other than activities constituting an unrelated trade or business as described in Section 513 of that code.

SEC. 2.5. Section 91503 of the Government Code, as amended by Section 2 of this act, is amended to read:

91503. The property acquired pursuant to this article shall be suitable for, or shall evidence an obligation respecting, certain activities or uses. The activities or uses shall include one or more of the activities or uses described in subdivision (a) and, unless incidental to those activities or uses, shall not include any of the activities described in, and not excepted from, subdivision (b).

(a) (1) Industrial uses including, without limitation, assembling, fabricating, manufacturing, processing, or warehousing activities with respect to any products of agriculture, forestry, mining, or manufacture, if these activities have demonstrated job creation or retention potential.

(2) Energy development, production, collection, or conversion from one form of energy to another.

(3) Research and development activities relating to commerce or industry, including, without limitation, professional, administrative, and scientific office and laboratory activities or uses.

(4) Land acquisition and development of property for use in automotive sales and service and related activities by the industrial development authorities of cities with populations of less than 50,000 persons in a county of the eighth class.

(b) (1) Residential real property for family unit or other housing activities.

(2) Airport, dock, wharf, or mass commuting activities, or storage or training activities related to any thereof.

(3) Sewage or solid waste disposal activities or electric energy or gas furnishing activities, unless the property acquired is suitable for one or more of the activities described in paragraph (2) of subdivision (a) and is not described in Section 142(f) of the Internal Revenue Code of 1986, as amended.

(4) Water furnishing activities.

(5) Any activities of persons qualifying as exempt persons under Section 501 of the Internal Revenue Code of 1986, as amended, undertaken by those persons, other than activities constituting an unrelated trade or business as described in Section 513 of that code.

SEC. 3. Section 91504 of the Government Code is repealed.

SEC. 4. Section 91504 is added to the Government Code, to read:

91504. Unless the context otherwise requires, the definitions in this article shall govern the construction of this title, as follows:

(a) "Acquire" and its variants means acquire, construct, improve, furnish, equip, repair, reconstruct or rehabilitate.

(b) "Administration expenses" means the reasonable and necessary expenses incurred by an authority in the administration of this title, including, without limitation, fees and costs of paying agents, trustees, attorneys, consultants, and others.

(c) "Authority" means any industrial development authority established pursuant to this title.

(d) "Board" means the board of directors of an authority.

(e) "Bonds" means the revenue obligations, inclusive of principal (premium, if any) and interest authorized to be issued by any authority under this title, including a single bond, a promissory note or notes, including bond anticipation notes, or other instruments evidencing an indebtedness or obligation.

(f) "Bond proceeds" means all amounts received by an authority upon sale or other disposition of any bonds.

(g) "Commission" means the California Industrial Development Financing Advisory Commission established pursuant to Article 3 (commencing with Section 91550).

(h) "Company" means a person, partnership, corporation, whether for profit or not, trust, or other private enterprise of whatever legal form, for which a project is undertaken or proposed to be undertaken pursuant to this title or which is in possession of property owned by an authority, and may include more than a single

enterprise.

(i) "Cost" as applied to any project, may embrace:

(1) The cost of construction, improvement, repair, and reconstruction.

(2) The cost of acquisition, including rights in land and other property, both real and personal and improved and unimproved, and franchises, and disposal rights.

(3) The cost of demolishing, removing, or relocating any building or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated.

(4) The cost of machinery, equipment and furnishings, of engineering and architectural surveys, plans, and specifications, and of transportation and storage until the facility is operational.

(5) The cost of agents or consultants, including, without limitation, legal, financial, engineering, accounting, and auditing, necessary or incident to a project and of the determination as to the feasibility or practicability of undertaking such project.

(6) The cost of issuance of any bonds and of financing, interest prior to, during, and for a reasonable period after completion of a project, and reserves for principal and interest and for extensions, enlargements, additions, repairs, replacements, renovations, and improvements.

(7) The cost of acquiring or refinancing existing obligations incident to the undertaking and carrying out, including the financing, of a project, and the reimbursement to any governmental entity or agency, or any company, of expenditures made by or on behalf of such entity, agency, or company that are costs of such project hereunder, without regard to whether or not such expenditures may have been made before or after the adoption of a resolution of intention with respect to that project by an authority.

(8) The cost of making relocation assistance payments as provided by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1.

(9) In the case only of taxable bonds, the cost of refunding or refinancing any outstanding debt or obligations with respect to any facilities, or the cost of any other working capital.

Except as provided in paragraph (9), "cost" does not otherwise include working capital.

(j) "Facilities" means property suitable for any one or more of the activities or uses described in Section 91503 and includes incidental facilities.

(k) "Governing body" means the board of supervisors, or city council, or board of directors of a redevelopment agency, as the case may be.

(*l*) "Indenture" means any mortgage, deed of trust, trust indenture, security agreement, or other instrument relating to establishing a lien or security interest in, or on, property, any pledge or other instrument relating to the possession of property, and any

assignment or other instrument relating to establishing any right, title, or interest in, or related to, property, including the revenues therefrom, given by an authority to a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state, or bondholder or agent, for the security of its bonds and the benefit of the bondholders.

(m) "Proceedings" means the actions taken by an authority in undertaking, carrying out, and completing a project, including, without limitation, the project agreements, indenture, bonds, and resolutions.

(n) "Project" means the acquisition of facilities by the issuance of bonds upon the application of and to be repaid by payments from a company for the purposes of this title.

(o) "Project agreements" means the agreements between an authority and a company respecting a project, and may include, without limitation, leases, subleases, options, and installment or other contracts of purchase or sale, loan, or guaranty agreements, notes, mortgages, deeds of trust, and security agreements.

(p) "Property" means any land, air rights, water rights, disposal rights, improvements, buildings or other structures, and any personal property, and includes, but is not limited to, machinery and equipment, whether or not in existence or under construction, and interests in any of the foregoing, or promissory notes or other obligations of any kind respecting such interests.

(q) "Public agency" means any county, city and county, city, or redevelopment agency.

(r) "Revenues" means all rents, purchase payments, and other income derived by an authority from, or with respect to, the sale, lease, or other voluntary or involuntary disposition of, or repayment of loans with respect to, property, bond proceeds, and any receipts derived from the deposit or investment of any such income or proceeds in any fund or account of an authority, but does not include receipts designated to cover administration expenses.

(s) "Tax-exempt" means, with respect to any bonds, that the interest on the bonds is excluded from gross income of the holders thereof for federal-income-tax purposes.

(t) "Taxable" means, with respect to any bonds, that the bonds are not tax-exempt.

SEC. 4.5. Section 91505 of the Government Code is amended to read:

91505. This title shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute which is chaptered prior to January 1, 1990, deletes or extends that date.

SEC. 5. Section 91527 of the Government Code is amended to read:

91527. Authorities shall have all powers necessary or appropriate for carrying out the purposes of this title including, without limitation, the following powers, together with all powers incidental thereto:

(a) To acquire property by purchase, exchange, gift, lease, contract, or otherwise, except by eminent domain. The power to acquire real property shall not be exercised for other than authority use except pursuant to project agreement or indenture.

(b) To maintain property.

(c) To dispose of property by lease, sale, exchange, donation, release, relinquishment, or otherwise.

(d) With respect to property, to: (1) charge and collect rent under any lease; (2) sell at public or private sale, with or without public notice; (3) sell at a discount or below appraised value or for a nominal consideration, only; (4) sell on an installment payment or a conditional sales basis; (5) convey, or provide for the transfer of, property without further act of the authority, upon exercise of an option; (6) sell at a fixed or formula price, and receive for any such sale the note or notes of a company and mortgages, deeds of trust, or other security agreements respecting such property.

(e) To acquire and hold property, including funds, project agreements and other obligations of any kind, and pledge, encumber or assign the same, or the revenues therefrom or any portion of such revenues, or other rights, whether then owned or possessed, or thereafter acquired, for the benefit of the bondholders, and as security or additional security for any bonds or the performance of obligations under an indenture

(f) To provide for the advance of bond proceeds and other funds pursuant to project agreements as necessary to pay or reimburse for project costs.

(g) To exercise all rights and to perform all obligations of the authority under the project agreements and indenture, including the right, upon any event of default by or the failure to comply with any of the obligations thereof by the lessee, purchaser, or other company thereunder, to dispose of all or part of the property to the extent authorized by the project agreements or indenture.

(h) To borrow money and issue its bonds for the purpose of paying all or any part of the costs of a project, and for any other authorized purpose, as provided in this title.

(i) To contract and pay compensation for professional, financial, and other services.

(j) To refund outstanding bonds of the authority without regard to the purposes of this title when the board determines that such refunding will be of benefit to a company or holders of such bonds, subject to the provisions of the proceedings.

(k) To invest, deposit, and reinvest funds under the control of an authority and bond proceeds in the types of securities or obligations authorized, pending application thereof to the purposes authorized by, subject to the provisions of, the proceedings.

(*l*) To acquire insurance against any liability or loss in connection with property, in such amounts as it deems desirable.

(m) To expressly waive any immunity of the political subdivisions of this state provided by the Constitution or laws of the United States

of America to taxation by the United States of interest on bonds issued by an authority, in obtaining federal benefits.

(n) To fund administration expenses (1) by the establishment and collection of reasonable fees in amounts as may be determined by the board, but in no event shall the fees exceed 1 percent of the estimated maximum amount of bonds proposed by an application to be issued, (2) by the acceptance of funds and other aid from the public agency and from other governmental sources authorized to provide such funds or aid, (3) by the acceptance of contributions from business, trade, labor, community, and other associations, and (4) by other authorized means.

SEC. 6. Section 91530 of the Government Code is amended to read:

91530. (a) Applications for projects or companies not in accordance with the reasonable priorities and criteria which an authority may establish need not be accepted and further processed by an authority.

(b) Acceptance of any application in no way obligates an authority to adopt a resolution of intention or undertake the project proposed.

(c) Upon acceptance of any application and request of a company, the board shall determine whether it is likely that the undertaking of the project by the authority will be a substantial factor in the accrual of one or more of the public benefits from the use of the facilities as proposed in the application, whether the activities or uses are in accord with Section 91503, and whether the project is otherwise in accord with the purposes and requirements of this title.

(d) Upon affirmative determinations under subdivision (c), the board may express the present intention of the authority to issue bonds in connection with the project and shall evidence the same by the adoption of a resolution of intention to undertake the project. The resolution of intention shall briefly describe the facilities, state the estimated principal amount of the bond issue (which estimate shall not limit the amount of bonds which may be issued), indicate whether it is expected that the bonds will be tax-exempt or taxable, and identify the company that is the applicant, and may include other provisions as the board shall prescribe.

(e) A notice of the filing of an application, naming the company that is the applicant, briefly describing the facilities, stating the estimated principal amount of the bond issue and referring to the application for further particulars, shall be published by the secretary of the authority pursuant to Section 6061, and in the event the facilities are proposed to be located in a city and the project is proposed to be undertaken by an authority the jurisdiction of which is countywide, a copy of the notice shall be mailed by the secretary of the authority to the governing body of such city. Any amendment, supplement or clarification of an application which changes the company that is the applicant, the description of the facilities, or the estimated principal amount of the bond issue, as previously noticed,

shall be noticed in the same manner.

(f) A copy of the application shall be filed with the public agency. The authority shall not issue bonds with respect to any project unless the public agency shall approve, conditionally or unconditionally, the project, including the issuance of bonds therefor. Action to approve or disapprove a project shall be taken within 45 days of the filing with the public agency. Certification of approval or disapproval shall be made by the clerk of the public agency to the authority. If the governing body has declared itself to be the board pursuant to Section 91523, the approvals and other actions required of the authority or the public agency by this section may be taken and performed on a joint and consolidated basis, as may be deemed practicable in the discretion of the public agency.

(g) A resolution of intention may be revoked, amended, supplemented or clarified by the board, at any time prior to entry into the project agreements. The project agreements, indenture, bonds and other proceedings shall be consistent with the resolution of intention, and shall supersede it except to the extent otherwise expressed.

SEC. 7. Section 91531 of the Government Code is amended to read:

91531. (a) At any time following adoption of the resolution of intention, the board shall request that the commission make the determinations authorized by this section and shall provide for transmission to the commission of the fee required by the commission and such information as may be required by the commission.

(b) The commission shall review the submission and shall, by express findings on the basis of the submission, determine compliance with the following criteria:

(1) Public benefits, determined in accordance with the policy stated in Section 91502.1, from the use of the facilities likely will substantially exceed any public detriment from issuance of bonds in the estimated principal amount proposed in the application.

(2) Neither the completion of the project nor the operation of the facilities will have the proximate effect of relocation of any substantial operations of the company from one area of the state to another or in the abandonment of any substantial operations of the company within other areas of the state, or, if the completion or operation will have either of the effects, then the completion or operation is reasonably necessary to prevent the relocation of any substantial operations of the company from an area within the state to an area outside the state.

(3) The proposed issuance of bonds qualifies for issuance under the provisions of Article 5 (commencing with Section 91570).

(c) Written notification of the determinations of the commission shall be given the authority.

(d) Upon failure of the commission to make determinations as to compliance with the criteria within 60 days of the receipt of the

submission, unless the time is extended by written consent of the authority, the commission shall lose jurisdiction to make the determinations, and the authority shall determine compliance with the criteria.

(e) A proposed issuance of refunding bonds shall be evaluated solely under the requirement of paragraph (3) of subdivision (b), upon request of the board following the determination provided for in subdivision (j) of Section 91527.

(f) Determinations of the commission or of an authority as provided in subdivision (j) of Section 91527, Section 91530, and this section shall be final and conclusive.

(g) The authority shall not deliver bonds for the project until this section has been complied with.

(h) It is the intention of the Legislature that submissions be reviewed by the commission individually and not comparatively and that determinations be made generally in the order of receipt of the submissions. To the extent consistent with accomplishment of the public purposes as provided in Section 91502, priority consideration shall be given submissions on behalf of small and medium-size companies. To the extent that the public benefits finding under paragraph (1) of subdivision (b) of this section is based on employment benefits under paragraph (1) of subdivision (b) of Section 91502.1, the following considerations, as alternatives to each other, may in accordance with the submission, additionally be considered in making such finding:

(1) The willingness of the company to provide for the screening for employment of (i) individuals affected by industrial relocations or abandonments, (ii) new entrants or reentrants to the work force, (iii) unemployed or partially unemployed individuals who are registered for work at a public employment office or other approved place pursuant to Section 1253 of the Unemployment Insurance Code, or (iv) individuals participating in job training or placement programs directly calculated to increase employability or improve the employment of these individuals.

(2) The location of the facilities in or conveniently accessible to a portion of the work force residing within an economically distressed area of the state or an area of the state affected by industrial depression or decline.

An adverse finding shall not be made merely because each of such alternative considerations is inapplicable if the facilities are located in or are conveniently accessible to a portion of the work force residing within a pocket of economic distress or an area of the state largely rural in character.

SEC. 8. Section 91535 of the Government Code is amended to read:

91535. (a) All bonds issued by an authority in connection with a project shall be special obligations, only, of the authority, payable solely out of the revenues or out of the other sources specified in the proceedings.

(b) The bonds prescribed by subdivision (a) may:

(1) Be executed and delivered by the authority at any time and from time to time;

(2) Be in such type and denominations and of such terms and maturities;

(3) Be in registered or bearer form either as to principal or interest or both and carry such conversion and reconversion privileges;

(4) Be payable as term bonds or in such installments and at such time or times not exceeding 40 years from the date thereof;

(5) Be payable in such mediums and at such place or places within or without the state;

(6) Be sold below par or face value thereof, but the sale price of tax-exempt bonds shall not be less than 95 percent of the par or face value of the bond;

(7) Be exchangeable for, or issuable in lieu of, such bonds;

(8) Be issuable in temporary form pending preparation of and exchange for definitive bonds; and

(9) Be executed by such officers, be authenticated, and contain such provisions not inconsistent with this article; all as shall be provided in the proceedings.

(c) If deemed advisable by the board, there may be retained in or granted by the proceedings an option to redeem or to cause to be redeemed prior to maturity all or any part of any bonds as may be specified in the proceedings, at the price or prices and after any notice or notices and on any terms and conditions which may be set forth in the proceedings and as may be briefly recited in the bond. Nothing in this title shall be construed to confer on an authority or any bondholder or trustee any right or option to redeem or cause the redemption of any bonds, except as may be provided in the proceedings under which they shall have been issued.

(d) Issuance by an authority of one or more issues of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same project or any other project, subject to any agreements with bondholders which may then exist.

(e) Any bonds of an authority at any time outstanding may at any time, and from time to time, be refunded, including the payment of any redemption premium and accrued interest to the date of redemption, by an authority by the issuance of its refunding bonds in any amount which the board may deem necessary or appropriate. Bonds may be issued as one issue for refunding and other authorized purposes. Any refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds to the payment, purchase or redemption of the bonds to be refunded thereby or to the deposit or investment in securities or obligations yielding amounts sufficient to pay or redeem the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby or bonds and claims with the consent

of the holders of the bonds so to be refunded and with such cash or property adjustments as may be agreed, and regardless of whether or not the bonds proposed to be refunded shall be payable at the same date or different dates or shall be due serially or otherwise.

(f) Each bond shall be deemed to be an investment security under the Uniform Commerical Code and a negotiable instrument, subject only to any provisions thereof for registration or other provisions restricting transfer, and shall be deemed to have been issued for an authorized purpose of the authority in exercise of the powers granted by this article, provided that the board so determines in the proceedings and the determination is recited in the bond.

SEC. 9. Section 91537.5 of the Government Code is amended to read:

91537.5. The bonds may bear interest on the amount or amounts, payable at the time or times, evidenced in the manner and at the fixed or variable rate or rates as shall be established by or pursuant to a method approved by the board, but the maximum rate of interest to be paid on any tax-exempt bonds shall not exceed 12 percent per annum or such higher rate as is at the time of accrual of interest then stated in Section 53531 or other applicable law. In the case of taxable bonds, or tax-exempt bonds the interest on which becomes includable in federal gross income after original issuance, the maximum rate of interest to be paid on the bonds shall not exceed 16 percent per annum. Project agreements may bear up to the same rate of interest as the underlying bonds.

SEC. 10. Section 91538 of the Government Code is amended to read:

91538. (a) Bonds may be sold at the prices which the board directs, at public or private sale, subject to subdivision (b) of Section 91535.

(b) The aggregate principal amount of tax-exempt bonds of an issue pursuant to this article for any project shall not exceed ten million dollars ($10,000,000).

(c) The aggregate principal amount of taxable bonds of an issue pursuant to this article for any project shall not exceed fifty million dollars ($50,000,000).

SEC. 11. Section 91549 of the Government Code is amended to read:

91549. (a) Except as may be authorized by other state legislation, this title provides the exclusive authority of public agencies for the undertaking, carrying out, and completion of projects authorized by this title.

(b) Except as limited by subdivision (a), the authorizations of this title shall be regarded as supplemental and additional to powers conferred by other laws. However, all projects authorized by this title which are undertaken, carried out, or completed by redevelopment agencies shall be subject to the terms and limitations of this title, notwithstanding the authorities and provisions created by and under other laws.

(c) In the exercise of any of the powers conferred, including powers relating to the offer, issuance, and sale of bonds, under this title, authorities need not comply with any law applicable to the exercise of similar powers except as referred to in this article.

(d) A charter city which is otherwise authorized to undertake, carry out and complete projects hereunder authorized need not comply with this title as to warehousing activities.

SEC. 12. Section 91558 is added to the Government Code, to read:

91558. (a) The commission may, upon request of two or more authorities, in order to share expenses and facilitate bond issuance, act as a pooling agent to issue bonds on a joint or composite basis for companies which have applied for financing to the participating authorities. Authorities shall enter into written agreements with the commission specifying the projects which are to be delegated to the commission for financing pursuant to this section.

(b) Prior to issuance of any bonds pursuant to this section, the authority and public agency shall have completed the procedures required by Section 91530.

(c) The commission may issue bonds as requested and authorized by this section. For these purposes, the commission is granted all of the powers of an authority and may enter into project agreements and take all steps toward the sale, issuance, and security of bonds in the same manner as authorities may do. The resolution required by Section 91537 shall be adopted by the commission rather than by an authority.

SEC. 13. Section 91573 of the Government Code is amended to read:

91573. (a) The aggregate amount of bonds qualified pursuant to this title in each calendar year shall not exceed three hundred fifty million dollars ($350,000,000) of the tax-exempt bonds and three hundred fifty million dollars ($350,000,000) of taxable bonds, per calendar year, commencing January 1, 1987. Until October 1 of each year, a minimum of 10 percent of the aggregate amount of taxable bond authority and a minimum of 10 percent of the aggregate amount of tax-exempt bond authority shall be reserved for projects located in enterprise zones pursuant to subdivision (d) of Section 7073 and program areas pursuant to subdivision (i) of Section 7082. Any unused portion of the above reserved amounts as of October 1 of each year shall be made available for projects without regard to enterprise zones and program areas.

(b) Each authority shall file with the commission reports at those times which are required by the commission, setting forth with respect to each project the bonds of an issue qualified by the commission or the authority, the bonds which have been issued and the dates of delivery and receipt of the purchase prices thereof, and the passage of the period or periods for lapse of qualification.

(c) Bonds may be delivered in return for the purchase price within a six-month period of the making of the determinations required to be made pursuant to Section 91531 or the making of the

last determinations to be made pursuant to Section 91532, unless extended for a definite period by further commission action or further authority action in the event the determinations were made by an authority pursuant to subdivision (d) of Section 91531. The unissued amount of a qualification lapses upon the expiration of such period or periods.

SEC. 14. Section 2.5 of this bill incorporates amendments to Section 91503 of the Government Code proposed by both this bill and AB 1859. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1988, but this bill becomes operative first, (2) each bill amends Section 91503 of the Government Code, and (3) this bill is enacted after AB 1859, in which case Section 91503 of the Government Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of AB 1859, at which time Section 2.5 of this bill shall become operative.

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:

The federal Tax Reform Act of 1986 has significantly altered the ability of local governments to issue revenue bonds for industrial development. It is necessary for this bill to take effect immediately so that state laws can be conformed to the new federal tax laws, which are already in effect.

CHAPTER 1110

An act to amend Section 3003 of, and to add Section 3058.6 to, the Penal Code, relating to prisoners.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 3003 of the Penal Code is amended to read:

3003. (a) An inmate who is released on parole shall be returned to the county from which he or she was committed.

For purposes of this subdivision, "county from which he or she was committed" means the county where the crime for which the inmate was convicted occurred.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county in a case where that would be in the best interests of the public and of the parolee. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168 or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to

Section 1170 decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record. In making its decision, the authority may consider, among others, the following factors:

(1) The need to protect the life or safety of a victim, the parolee, a witness or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The last legal residence of the inmate having been in another county.

(5) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(6) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) An inmate may be paroled to another state pursuant to any other provision of law.

SEC. 2. Section 3058.6 is added to the Penal Code, to read:

3058.6. (a) Whenever any person confined to state prison is serving a term for the conviction of a violent felony listed in subdivision (c) of Section 667.5, the Board of Prison Terms, with respect to inmates sentenced pursuant to subdivision (b) of Section 1168 or the Department of Corrections, with respect to inmates sentenced pursuant to Section 1170, shall notify the sheriff or chief of police, or both, having jurisdiction over the community in which the person is scheduled to be released on parole or rereleased following a period of confinement pursuant to a parole revocation without a new commitment. Except as provided in subdivision (b), the notification shall be made at least 15 days prior to the scheduled release date and, in all cases, shall include the name of the person who is scheduled to be released, whether or not the parolee is required to register with law enforcement, and the community in which the person will reside.

(b) When an inmate serving a term for the conviction of a violent felony listed in subdivision (c) of Section 667.5 is scheduled to be released pursuant to subdivision (b) of Section 3003 to a county other than the county from which he or she was committed, the board or department shall provide written notice of that release to the sheriff or police chief, or both, having jurisdiction over the community in which the inmate is scheduled to be released. The notification shall be made at least 45 days prior to the scheduled release date and, in all cases, shall include the name of the person who is scheduled to be released, whether or not the person is required to register with local law enforcement, and the community in which the person will reside.

The law enforcement agency receiving the notice referred to in this subdivision shall have 15 days from receipt of the notice to

provide written comment to the board or department regarding the impending release. Those comments shall be considered by the board or department which may, based on those comments, modify its decision regarding the community in which the person is scheduled to be released.

(c) In the event that the court orders the immediate release of an inmate, the department shall notify the sheriff or chief of police, or both, having jurisdiction over the community in which the person is scheduled to be released on parole at the time of release.

(d) The notification required by this section shall be made whether or not a request has been made under Section 3058.5.

(e) The time limits imposed by this section are not applicable where the release date of an inmate has been advanced by restoration of behavior credits, presentence credits, or other process or procedure that could not have reasonably been anticipated by the Department of Corrections and where, as the result of the time adjustments, there is less than 30 days remaining on the sentence before the inmate's release on parole, but notice shall be given as soon as practicable. In no case shall notice required by this section to the appropriate law enforcement agency be later than the day of release on parole. If, after the 45-day notice to law enforcement relating to an out-of-county placement, there is change of county, notice to the ultimate county of placement shall be made upon the determination of the county of placement.

CHAPTER 1111

An act to amend Sections 33080.6, 33334.2, 33334.3, 33334.6, and 33413 of, to amend, repeal, and add Section 33080.4 of, and to add Section 33011.2 to, the Health and Safety Code, relating to housing.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. The Legislature reaffirms its finding and declaration, stated in Section 33334.6 of the Health and Safety Code, that the provision of housing is itself a fundamental purpose of the Community Redevelopment Law and that a generally inadequate statewide supply of decent, safe, and sanitary housing affordable to persons of low and moderate income, as defined by Section 50093 of that code, threatens the accomplishment of the primary purposes of the Community Redevelopment Law, including job creation, attracting new private investments, and creating physical, economic, social, and environmental conditions to remove and prevent the recurrence of blight, and that the provision of affordable housing by redevelopment agencies and the use of taxes allocated to the agency

pursuant to subdivision (b) of Section 33670 of that code is of statewide benefit and of particular benefit and assistance to all local governmental agencies where the housing is provided.

SEC. 2. Section 33011.2 is added to the Health and Safety Code, to read:

33011.2. "Director" means the Director of Housing and Community Development.

SEC. 3. Section 33080.4 of the Health and Safety Code is amended to read:

33080.4. For the purposes of compliance with subdivision (c) of Section 33080.1, the description of the agency's activities shall contain the following information regardless of whether each activity is funded exclusively by the state or federal government, for each project area and for the agency overall:

(a) Pursuant to Section 33413, the total number of households, including separate subtotals of the numbers of households for persons and families of low or moderate income and very low income households, that were displaced or moved from their dwelling units as part of a redevelopment project of the agency during the previous fiscal year.

(b) Pursuant to Section 33413.5, the total number of households, including separate subtotals of the numbers of households for persons and families of low or moderate income and very low income households, that the agency estimates will be displaced or will move from their dwellings as part of a redevelopment project of the agency during the present fiscal year.

(c) The total number of dwelling units housing persons and families of low and moderate income and very low income households, respectively, which have been destroyed or removed from the low- or moderate-income housing market during the previous fiscal year as part of a redevelopment project of the agency.

(d) The total numbers of agency-assisted dwelling units which were constructed, rehabilitated, acquired, or subsidized during the previous fiscal year for occupancy at an affordable housing cost by persons and families of low and moderate income and very low income households, respectively.

(e) The status and use of the Low and Moderate Income Housing Fund created pursuant to Section 33334.3, including information on the use of this fund for very low income households, lower income households and households for persons and families of low or moderate income.

(f) Any other information which the agency believes useful to explain its housing programs, including, but not limited to, housing for persons and families of other than low and moderate income.

This section shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1991, deletes or extends that date.

SEC. 3.5. Section 33080.4 is added to the Health and Safety Code, to read:

33080.4. For the purposes of compliance with paragraph (e) of Section 33080.1, the description of the agency's activities shall contain the following information irrespective of whether or not each activity is funded exclusively by the state or federal government:

(a) The total number of households that were displaced or moved from their dwelling units as part of a redevelopment project of the agency during the previous fiscal year.

(b) The total number of households that the agency estimates will be displaced or will move from their dwellings as part of a redevelopment project of the agency during the present fiscal year.

(c) The total number of dwelling units housing persons and families of low and moderate income which have been destroyed or removed from the low- or moderate-income housing market during the previous fiscal year as part of a redevelopment project of the agency.

(d) The total number of dwelling units which the agency has caused to be constructed, rehabilitated, or developed during the previous fiscal year for occupancy at an affordable housing cost by persons and families of low and moderate income.

This section shall become operative January 1, 1991.

SEC. 4. Section 33080.6 of the Health and Safety Code is amended to read:

33080.6. On or before April 1 of each year, the department shall compile and publish reports of the activities of redevelopment agencies for the previous fiscal year, based on the information reported pursuant to subdivision (c) of Section 33080.1 and reporting the types of findings made by agencies pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 33334.2, including the date of the findings. The department's compilation shall also report on the project area mergers reported pursuant to Section 33488. The department shall publish this information for each project area of each redevelopment agency. These reports may also contain the biennial review of relocation assistance required by Section 50460. The first report published pursuant to this section shall be for the 1984–85 fiscal year. For fiscal year 1987–88 and succeeding fiscal years, the report shall contain a list of those project areas which are not subject to the requirements of Section 33413.

This section shall remain in effect only until January 1, 1991, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 1991, deletes or extends that date.

SEC. 5. Section 33334.2 of the Health and Safety Code is amended to read:

33334.2. (a) Not less than 20 percent of all taxes which are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing and improving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, unless

one of the following findings is made annually by resolution:

(1) That no need exists in the community to improve or increase the supply of low- and moderate-income housing in a manner which would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(2) That some stated percentage less than 20 percent of the taxes which are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to persons and families of low or moderate income and very low income households, is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need which can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with the provisions of Article 9 (commencing with Section 33410).

(b) Within 10 days following the making of a finding under subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of

any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purpose of this section, the agency may exercise any or all of its powers, including the following:

(1) Acquire land or building sites.

(2) Improve land or building sites with onsite or offsite improvements.

(3) Donate land to private or public persons or entities.

(4) Construct buildings or structures.

(5) Acquire buildings or structures.

(6) Rehabilitate buildings or structures.

(7) Provide subsidies to, or for the benefit of, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093.

(8) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that such use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area which is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

(j) (1) Notwithstanding Sections 50079.5, 50093, and 50105, for purposes of providing assistance to mortgagors participating in a

homeownership residential mortgage revenue bond program pursuant to Section 33750, or a home financing program pursuant to Section 52020, or a California Housing Finance Agency home financing program, "area median income" means the highest of the following:

(A) Statewide median household income.

(B) Countywide median household income.

(C) Median family income for the 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.

Nothing in Section 50093 shall prevent the agency from adopting separate family size adjustment factors or programmatic definitions of income to qualify households, persons, and families for the programs of the agency.

(2) To the extent that any portion of the Low and Moderate Income Housing Fund is expended to provide assistance to mortgagors participating in programs whose income exceeds that of persons and families of low or moderate income, as defined in Section 50093, the agency shall, within two years, expend or enter into a legally enforceable agreement to expend twice that sum exclusively to increase and improve the community's supply of housing available at affordable housing cost, as defined in Section 50052.5, to lower income households, as defined in Section 50079.5, of which at least 50 percent shall be very low income households, as defined in Section 50105.

(3) In addition to the requirements of subdivision (c) of Section 33413, the agency shall require that the lower and very low income dwelling units developed pursuant to this subdivision remain available at affordable housing cost to lower and very low income households for at least 30 years, except as to dwelling units developed with the assistance of federal or state subsidy programs which terminate in a shorter period and cannot be extended or renewed.

(4) The agency shall include within the report required by Section 33080 information with respect to compliance by the agency with the requirements of this subdivision.

SEC. 5.5. Section 33334.2 of the Health and Safety Code, as amended by Section 1 of SB 1218, is amended to read:

33334.2. (a) Not less than 20 percent of all taxes which are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing and improving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, unless one of the following findings is made annually by resolution:

(1) That no need exists in the community to improve or increase the supply of low- and moderate-income housing in a manner which would benefit the project area and that this finding is consistent with

the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(2) That some stated percentage less than 20 percent of the taxes which are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to persons and families of low or moderate income and very low income households, is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need which can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with the provisions of Article 9 (commencing with Section 33410).

(b) Within 10 days following the making of a finding under subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purpose of this section, the agency may exercise any or all of its powers, including the following:

(1) Acquire land or building sites.

(2) Improve land or building sites with onsite or offsite improvements.

(3) Donate land to private or public persons or entities.

(4) Construct buildings or structures.

(5) Acquire buildings or structures.

(6) Rehabilitate buildings or structures.

(7) Provide subsidies to, or for the benefit of, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093.

(8) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(9) Maintain the community's supply of mobilehomes.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that such use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area which is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

(j) (1) Notwithstanding Sections 50079.5, 50093, and 50105, for purposes of providing assistance to mortgagors participating in a homeownership residential mortgage revenue bond program pursuant to Section 33750, or a home financing program pursuant to Section 52020, or a California Housing Finance Agency home

financing program, "area median income" means the highest of the following:

(A) Statewide median household income.

(B) Countywide median household income.

(C) Median family income for the 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.

Nothing in Section 50093 shall prevent the agency from adopting separate family size adjustment factors or programmatic definitions of income to qualify households, persons, and families for the programs of the agency.

(2) To the extent that any portion of the Low and Moderate Income Housing Fund is expended to provide assistance to mortgagors participating in programs whose income exceeds that of persons and families of low or moderate income, as defined in Section 50093, the agency shall, within two years, expend or enter into a legally enforceable agreement to expend twice that sum exclusively to increase and improve the community's supply of housing available at affordable housing cost, as defined in Section 50052.5, to lower income households, as defined in Section 50079.5, of which at least 50 percent shall be very low income households, as defined in Section 50105.

(3) In addition to the requirements of subdivision (c) of Section 33413, the agency shall require that the lower and very low income dwelling units developed pursuant to this subdivision remain available at affordable housing cost to lower and very low income households for at least 30 years, except as to dwelling units developed with the assistance of federal or state subsidy programs which terminate in a shorter period and cannot be extended or renewed.

(4) The agency shall include within the report required by Section 33080 information with respect to compliance by the agency with the requirements of this subdivision.

SEC. 6. Section 33334.3 of the Health and Safety Code is amended to read:

33334.3. (a) The funds which are required by Section 33334.2 or 33334.6 to be used for the purposes of increasing and improving the community's supply of low- and moderate-income housing shall be held in a separate Low and Moderate Income Housing Fund until used.

(b) Any interest earned by the Low and Moderate Income Housing Fund shall accrue to the fund and may only be used in the manner prescribed in Section 33334.2.

(c) The moneys in the Low and Moderate Income Housing Fund shall be used to increase and improve the supply of low- and moderate-income housing within the territorial jurisdiction of the agency.

(d) It is the intent of the Legislature that the Low and Moderate Income Housing Fund be used to the maximum extent possible to

defray the costs of production and improvement of low- and moderate-income housing and that the amount of money spent for planning and general administrative activities associated with the development or improvement of that housing not be disproportionate to the amount actually spent for the costs of production and improvement of that housing.

(e) The requirements of this subdivision apply to all new or substantially rehabilitated housing units developed or otherwise assisted, with moneys from the Low and Moderate Income Housing Fund, pursuant to an agreement approved by an agency on or after January 1, 1988. Except to the extent a longer period of time may be required by other provisions of law, the agency shall require that housing units subject to this subdivision shall remain available at affordable housing costs to persons and families of low or moderate income and very low income households for the longest feasible time, but for not less than the following periods of time, except as provided in paragraph (3) of subdivision (j) of Section 33334.2:

(1) Fifteen years for rental units. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (A) the replacement units are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (B) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(2) Ten years for owner-occupied units. However, the agency may permit sales of owner-occupied units prior to the expiration of the 10-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program which protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program which establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited in the Low and Moderate Income Housing Fund.

The agency shall require the recording in the office of the county recorder of covenants or restrictions implementing this subdivision for each parcel or unit of real property subject to this subdivision. Notwithstanding any other provision of law, the covenants or restrictions shall run with the land and shall be enforceable, against the original owner and successors in interest, by the agency or the community.

(f) "Housing," as used in this section, includes residential hotels, as defined in subdivision (k) of Section 37912.

SEC. 7. Section 33334.6 of the Health and Safety Code is amended to read:

33334.6. (a) The Legislature finds and declares that the provision of housing is itself a fundamental purpose of the

Community Redevelopment Law and that a generally inadequate statewide supply of decent, safe, and sanitary housing affordable to persons and families of low or moderate income, as defined by Section 50093, threatens the accomplishment of the primary purposes of the Community Redevelopment Law, including job creation, attracting new private investments, and creating physical, economic, social, and environmental conditions to remove and prevent the recurrence of blight. The Legislature further finds and declares that the provision and improvement of affordable housing, as provided by Section 33334.2, outside of redevelopment project areas can be of direct benefit to those projects in assisting the accomplishment of project objectives whether or not those redevelopment projects provide for housing within the project area. The Legislature finds and determines that the provision of affordable housing by redevelopment agencies and the use of taxes allocated to the agency pursuant to subdivision (b) of Section 33670 is of statewide benefit and of particular benefit and assistance to all local governmental agencies in the areas where the housing is provided.

(b) This section is applicable to all project areas, or portions of project areas, which are not subject to Section 33334.2, except that a project area, or portion of a project area, for which a resolution was adopted pursuant to subdivision (i) of Section 33334.2 is subject to this section. Project areas subject to this section which are merged prior to, or on or after, January 1, 1986, are subject to the requirements of both this section and Section 33487. The deposit of taxes into the Low and Moderate Income Housing Fund in compliance with either this section or Section 33487 shall satisfy the requirements of both sections in the year those taxes are deposited.

(c) Except as otherwise permitted by subdivisions (d) and (e), not less than 20 percent of the taxes allocated to the agency pursuant to Section 33670 from project areas specified in subdivision (b) for the 1985–86 fiscal year and each succeeding fiscal year shall be deposited into the Low and Moderate Income Housing Fund established pursuant to Section 33334.3 and used for the purposes set forth in Section 33334.2, unless the agency, by resolution, makes one of the findings described in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 33334.2. Subdivisions (b) and (c) of Section 33334.2 apply if an agency makes any of those findings.

(d) In any fiscal year, the agency may deposit less than the amount required by subdivision (c) into the Low and Moderate Income Housing Fund if the agency finds that the difference between the amount deposited and the amount required by subdivision (c) is necessary to make payments under existing obligations of amounts due or required to be committed, set aside, or reserved by the agency during that fiscal year and which are used by the agency for that purpose. For purposes of this section, "existing obligations" means the principal of, and interest on, loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the agency to finance or refinance, in

whole or in part, any redevelopment project existing on, and created prior to January 1, 1986, and contained on the statement of existing obligations adopted pursuant to subdivision (f). Obligations incurred on or after January 1, 1986, shall be deemed existing obligations for purposes of this section if the net proceeds are used to refinance existing obligations contained on the statement.

(e) In each fiscal year prior to July 1, 1996, the agency may deposit less than the amount required by subdivisions (c) and (d) into the Low and Moderate Income Housing Fund if the agency finds that the deposit of less than the amount required by those subdivisions is necessary in order to provide for the orderly and timely completion of public and private projects, programs, or activities approved by the agency prior to January 1, 1986, which are contained on the statement of existing programs adopted pursuant to subdivision (f). Approval of these projects, programs, and activities means approval by the agency of written documents which demonstrate an intent to implement a specific project, program, or activity and is not limited to final approval of a specific project, program, or activity.

(f) Any agency which deposits less than the amount required by subdivision (c) into the Low and Moderate Income Housing Fund pursuant to subdivision (d) or (e) shall adopt prior to September 1, 1986, by resolution, after a noticed public hearing, a statement of existing obligations or a statement of existing programs, or both.

(1) The agency shall prepare and submit the proposed statement to the legislative body and to the Department of Housing and Community Development prior to giving notice of the public hearing. Notice of the time and place of the public hearing shall be transmitted to the Department of Housing and Community Development at least 15 days prior to the public hearing and notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the community once a week for at least two successive weeks prior to the public hearing. The legislative body shall maintain a record of the public hearing.

(2) A copy of the resolution adopted by the agency, together with any amendments to the statement of the agency, shall be transmitted to the Department of Housing and Community Development within 10 days following adoption of the resolution by the agency.

(3) A statement of existing obligations shall describe each existing obligation and, based upon the best available information, as determined by the agency, list the total amount of the existing obligation, the annual payments required to be made by the agency pursuant to the existing obligation, and the date the existing obligation will be discharged in full.

(4) A statement of existing programs shall list the specific public and private projects, programs, or activities approved prior to January 1, 1986, which are necessary for the orderly completion of the redevelopment plan as it existed on January 1, 1986. No project, program, or activity shall be included on the statement of existing programs unless written evidence of the existence and approval of

the project, program, or activity prior to January 1, 1986, is attached to the statement of existing programs.

(g) If, pursuant to subdivision (d) or (e), the agency deposits less than 20 percent of the taxes allocated to the agency pursuant to Section 33670 in any fiscal year in the Low and Moderate Income Housing Fund, the amount equal to the difference between 20 percent of the taxes allocated to the agency pursuant to Section 33670 for each affected project and the amount deposited that year shall constitute an indebtedness of the project. The agency shall adopt a plan to eliminate the deficit in subsequent years as determined by the agency.

(h) The obligations imposed by this section, including deficits, if any, created under this section, are hereby declared to be an indebtedness of the redevelopment project to which they relate, payable from taxes allocated to the agency pursuant to Section 33670, and shall constitute an indebtedness of the agency with respect to the redevelopment project until paid in full.

(i) In any litigation to challenge or attack a statement of existing obligations, the decision by the agency after the public hearing to include an existing obligation on the statement of existing obligations, or the decision by the agency after the public hearing to include a project, program, or activity on the statement of existing programs, the court shall uphold the action of the agency unless the court finds that the agency has abused its discretion. The Legislature finds and declares that this standard of review is necessary in order to protect against the possible impairment of existing obligations, programs, and activities because agencies with project areas adopted prior to January 1, 1977, have incurred existing obligations and have adopted projects, programs, and activities with the authority to receive and pledge the entire allocation of funds authorized by Section 33670.

SEC. 8. Section 33413 of the Health and Safety Code is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units at affordable housing cost within the territorial jurisdiction of the agency.

(b) (1) At least 30 percent of all new or rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) At least 15 percent of all new or rehabilitated dwelling units developed within the project area by public or private entities or persons other than the agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a) and in the aggregate to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units.

(c) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, or constructed pursuant to subdivision (a) or (b) remain available at affordable housing cost to persons and families of low income, moderate income, and very low income households, respectively,, but for not less than the period of the land use controls established in the redevelopment plan, except to the extent a longer period of time may be required by other provisions of law. If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in the previous sentence. These requirements shall be made enforceable in the same manner as provided in subdivision (e) of Section 33334.3.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas which are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to two replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing

development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equal or exceed the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to the same income level of households as the destroyed or removed units.

SEC. 9. Section 5.5 of this bill incorporates amendments to Section 33334.2 of the Health and Safety Code proposed by both this bill and SB 1218. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1988, (2) each bill amends Section 33334.2 of the Health and Safety Code, and (3) this bill is enacted after SB 1218, in which case Section 33334.2 of the Health and Safety Code, as amended by SB 1218, shall remain operative only until the operative date of this bill, at which time Section 5.5 of this bill shall become operative, and Section 5 of this bill shall not become operative.

SEC. 10. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 1112

An act relating to earthquake insurance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. The Department of Insurance shall conduct a comprehensive study of issues related to the provision of earthquake insurance in the State of California and shall prepare a report to be submitted to the Legislature. A preliminary report shall be submitted on or before December 31, 1988, and a final report on or before December 31, 1990.

The purpose and scope of the study shall include, but not be limited to, all of the following:

(a) A recommendation as to courses of action, including legislation or regulation appropriate at the state, federal, or international governmental levels, which should be undertaken to protect California policyholders and California admitted insurers in the event of an earthquake.

(b) A recommendation of state policy as to the continued marketing of earthquake coverage in this state after earthquake predictions by a reputable individual, state, or federal agency, scientific organization, or otherwise, and where the prediction is accorded extensive media coverage.

(c) A recommendation of state policy concerning the marketing of earthquake insurance coverage in this state and availability of that coverage in areas of high earthquake risk.

(d) An analysis of the capacity of insurers to write earthquake coverage on dwellings and contents in this state. The analysis shall also consider the capacity of the reinsurance industry to write and cover dwelling and contents loss from the peril of earthquakes in this state.

(e) A determination based in part on geologic hazards information provided by the Division of Mines and Geology of the Department of Conservation as to the dollar exposure in dwelling insurance written or that could be written on a geographical basis, including a determination as to what areas may have a significant overexposure.

(f) An urban geological hazards mapping study, which shall be designed by the Division of Mines and Geology of the Department of Conservation, using what is learned from that department's effort under subdivision (e), to improve the information available to property owners, local governments, and to the insurance industry regarding geologic-seismic hazards and on the severity and likelihood of ground shaking and related secondary hazards such as liquefaction and slope failure.

In preparing and conducting the report and study of earthquake insurance, the Department of Insurance shall consult with the respective Chairpersons of the Assembly Finance and Insurance Committee and the Senate Insurance, Claims, and Corporations Committee prior to commencing the study and thereafter at least quarterly until the final report is submitted to the Legislature. The department shall also consult with persons who have held the office of Insurance Commissioner since 1970, the Governor's Task Force on Earthquake Hazard Reduction, the State Seismic Safety Commission, the Office of Emergency Services, the current and past consultants to the department on probable maximum loss studies, and other groups, individuals, and agencies as needed. The department is also authorized to retain outside assistance in conducting the study.

SEC. 2. (a) The sum of up to one hundred fifty thousand dollars ($150,000) is hereby appropriated from the Insurance Fund to the Department of Insurance for the purposes of this act, for use during the 1987–88 fiscal year, the 1988–89 fiscal year, the 1989–90 fiscal year,

and through December 31, 1990.

(b) The sum of one hundred fifty thousand dollars ($150,000) is hereby appropriated from the Insurance Fund to the Department of Conservation for the purposes of the act, to be allocated in amounts of one hundred thousand dollars ($100,000) for the 1988–89 fiscal year and fifty thousand dollars ($50,000) for the 1989–90 fiscal year.

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 available and adequate insurance coverage for protection from the peril of earthquakes for all Californians, it is essential that the Legislature and the Governor have an indication on the potential economic loss to the insurance industry in the event of a major earthquake in California. Therefore, it is necessary that this act take effect immediately.

CHAPTER 1113

An act to amend Sections 1798.9 and 1798.10 of, and to add Section 1798.11 to, the Civil Code, and to add Section 8790.7 to the Government Code, relating to information, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. The Legislature hereby finds and declares the following:

(a) The State of California should have an information policy that directs state agencies to ensure the following:

(1) Efficient use of state information resources, including the use of telecommunications and computer systems for the collection, processing, and dissemination of information in the conduct of the state's business.

(2) Reliable and convenient public access to public records, without discrimination among citizens on the basis of ability to pay for access.

(3) Protection for the privacy of persons about whom personal information is supplied to the state, in the conduct of the state's business.

(b) The state has no information policy, and responsibility for efficient, convenient, and secure use of information in the possession of the state is fragmented among various agencies and departments. There is little or no enforcement of current laws which, individually, provide some guidance to state agencies in these areas.

(c) The Legislature and Governor should be regularly informed of the current condition of state information resources so that they can construct a coherent, workable information policy appropriate to the needs of the State of California and its citizens.

SEC. 2. Section 1798.9 of the Civil Code is amended to read:

1798.9. Each agency maintaining a system of records containing personal information shall file with the Office of Information Practices the notice specified in Section 1798.10. The notices shall be filed with that office by the agencies on March 31 of each year. The notices shall be retained by the originating agency and the office until superseded or until after the record system to which the notice applies is abolished. The notices shall serve as the public directory to agency records containing personal information. The Office of Information Practices shall prescribe the form for filing and method of updating the notices required by Section 1798.10 to implement this section.

SEC. 3. Section 1798.10 of the Civil Code is amended to read:

1798.10. Notices required to be filed by Section 1798.9 shall specify each of the following:

(a) The names of the agency and the subdivision within the agency and the title and business address of the agency official responsible for the maintenance of each record system containing personal information.

(b) A brief description of the record system, including a name or title, the categories of individuals and an estimate of the number of individuals, and the types of personal information maintained in the system.

(c) The use or purpose within the agency for the personal information within the system.

(d) Disclosures of the information that will be made pursuant to subdivision (e) or (f) of Section 1798.24.

(e) The legal authority which authorizes the maintenance of personal information in the system.

(f) Retention and disposal policies for the personal information in the system.

(g) The procedures to be followed for an individual to gain access to, and contest the contents of, records containing personal information.

(h) Known instances during the reporting period in which personal information has been distributed by the agency or obtained by any person in a manner not in accord with law.

(i) The cost to the agency of complying with the provisions of this chapter and the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

If an agency fails to file such a report, the office promptly shall inform the agency and if the agency fails to comply within 60 days thereafter, the office shall report on the violation in accordance with subdivision (b) of Section 1798.6. Upon a showing of good cause by

an agency, the Office of Information Practices may extend the time for filing notices for a period not to exceed 120 days.

SEC. 4. Section 1798.11 is added to the Civil Code, to read:

1798.11. The Office of Information Practices shall, on or before June 30, 1988, and annually thereafter, transmit a report to the Legislature regarding the compliance of state agencies with the provisions of this chapter and the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the cost to the state of agencies complying with this act and the California Public Records Act, and recommendations for legislation to improve state agencies' compliance with these acts.

SEC. 5. Section 2 of this act, which amends Section 1798.9 of the Civil Code, shall become operative on January 1, 1989. However, each agency subject to the filing requirement of that section shall file with the Office of Information Practices on March 31, 1988, in the manner provided pursuant to that section a notice containing the information specified in subdivisions (h) and (i) of Section 1798.10 of the Civil Code.

SEC. 6. Section 8790.7 is added to the Government Code, to read:

8790.7. (a) Notwithstanding Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3, any action taken by the commission prior to the effective date of this section is not subject to an action under Section 11130.3. For purposes of Section 11130.3, any such action shall be deemed to have been taken in substantial compliance with Sections 11123 and 11125.

(b) No member of the commission shall be found to have violated any provision of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 for any action taken prior to the effective date of this section.

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 Office of Information Practices to more thoroughly and reliably examine reports collected from government agencies regarding the security of their data records and report to the Legislature on state data security practices, and in order to provide for the prompt and effective implementation of the proposals of this state to build the Superconducting Super Collider in this state, it is necessary for this act to take effect immediately.

CHAPTER 1114

An act to amend Sections 70059.7, 74196, 74642, 74643, 74644, 74645, and 74647 of the Government Code, relating to courts.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 70059.7 of the Government Code is amended to read:

70059.7. In Santa Barbara County each regular official reporter shall be paid a biweekly salary which shall be one thousand four hundred thirty-four dollars and twenty-four cents ($1,434.24) which salary shall include payment for services in reporting all proceedings in the superior court, before the grand jury, and before coroners' inquests.

Reporters pro tempore shall be paid at a per diem rate of up to a maximum of one hundred forty-two dollars ($142) or seventy-one dollars ($71) for each half day or four (4) hour period or portion thereof for the days they are actually on duty under order of the court, and shall receive from the county their necessary traveling and other expenses when necessarily called from other counties. Rates of compensation of regular official reporters and official reporters pro tempore may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the court, provided, however, that any changes in compensation which are made pursuant to this section shall be on an interim basis and shall remain in effect only until January 1, 1989, unless ratified by statute by the Legislature prior to that date.

In such a county, the fee required by Section 70053 shall be ten dollars ($10).

In addition to any fee otherwise required, in all contested civil trials wherein the services of a court reporter have been requested by any party to the action, a per diem fee shall be charged to the party requesting such service, or, at the discretion of the court, to the parties on a pro rata basis, for each day of court reporting service or portion thereof, equal to the per diem rate established for pro tempore reporters of the court. If the court assesses the reporter's fee on a pro rata basis, the reporter and fee attached thereto may be waived upon the timely stipulation of all parties. Fees in long-cause civil trials shall be posted with the clerk's office no later than 14 days prior to the date set for master calendar. Fees in short-cause civil trials of one day or less, shall be posted with the clerk's office no later than seven days prior to the date set for the short-cause calendar.

SEC. 1.5. Section 74196 of the Government Code, as amended by Chapter 263 of the Statutes of 1987, is amended to read:

74196. (a) All attachés and employees of the Sacramento

Municipal Court District shall be entitled to anniversary dates and salary step increases and shall receive the same vacation, sick leave, leave of absence, overtime, reinstatement, and similar privileges and benefits provided for the officers and employees of the County of Sacramento in the manner provided in the Sacramento County Personnel Ordinance or applicable agreements with recognized employee organizations. Rights provided by the county to return to formerly held employment in county civil service shall be applicable only to the positions of administrator and marshal.

(b) Except as otherwise provided in this article, the provisions of the Sacramento County Charter relating to the civil service system of the county and the rules of the Civil Service Commission adopted pursuant thereto shall be applicable to all attachés and employees of the Sacramento Municipal Court District in the same manner and to the same extent as applicable generally to the officers and employees of Sacramento County. The Sacramento County Civil Service Commission shall exercise the same jurisdiction over the attachés and employees of the Sacramento Municipal Court District as it exercises over the officers and employees of the county.

(c) The provisions of subdivision (b) shall not apply to any officer or employee in a position which this article expressly provides is not to be deemed a part of county civil service.

(d) Whenever reference to a numbered salary range is made in any section of this article, the range referred to is one of the ranges provided for in Section 2.78.410(d) of the Sacramento County Personnel Ordinance.

SEC. 2. Section 74642 of the Government Code is amended to read:

74642. Within the Santa Barbara Judicial District there shall be the following officers, attachés, and employees:

	Santa Barbara Municipal Court	Salary Range
1	Account Clerk II	324
1	Assistant Clerk-Administrative Officer—SB	459
1	Accounting Technician I	370
1	Administrative Secretary	366
1	Clerk-Administrative Officer—SB	513
10	Court Clerk I	319
12	Court Clerk II	346
10	Court Clerk III	373
3	Court Clerk, Senior	383
1	Calendar Coordinator, Municipal Court	409
2	Data Entry Operator II	324
1	Data Entry Operator III	338
3	Official Court Reporter—Municipal Court	1,434.24

2	Own Recognizance Officer	424
1	Own Recognizance Supervisor	444

Marshal Santa Barbara Municipal Court		Salary Range
3	Court Clerk I	319
1	Court Clerk II	346
1	Clerk Principal	381
7	Deputy Marshal	430
1	Marshal—SB	507
1	Marshal's Sergeant	465
1	Assistant Marshal—SB	479

SEC. 3. Section 74643 of the Government Code is amended to read:

74643. Within the Santa Maria Judicial District there shall be the following officers, attachés, and employees:

Santa Maria Municipal Court		Salary Range
1	Account Clerk II	324
1	Account Clerk III	351
1	Assistant Clerk-Administrative Officer—SM	425
1	Chief Deputy Clerk	390
1	Clerk-Administrative Officer—SM	472
5	Court Clerk I	319
4	Court Clerk II	346
3	Court Clerk III	373
2	Data Entry Operator II	324
1	Data Entry Operator III	338
1	Own Recognizance Officer	424
1	Own Recognizance Supervisor	444
1	Clerk Typist III	341
1	Court Clerk III—D	373

Marshal - Santa Maria Municipal Court		Salary Range
1	Account Clerk II	324
1	Account Clerk III	351
1	Assistant Marshal—SM	472
1	Clerk Typist II	314
4	Deputy Marshal	430
1	Marshal—SM	497
1	Marshal's Sergeant	465
1	Legal Service Specialist	360
1	Deputy Marshal—D	430

SEC. 4. Section 74644 of the Government Code is amended to read:

74644. Within the Lompoc Judicial District there shall be the following officers, attachés, and employees:

Municipal Court—Lompoc	Salary Range
1 Asst Clerk Administrative Officer—Lompoc	409
1 Clerk Administrative Officer—Lompoc	450
3 Court Clerk I	319
2 Court Clerk II	346
1 Court Clerk III	373

Marshal—Lompoc Municipal Court	Salary Range
1 Administrative Services Clerk	366
1 Deputy Marshal	430
1 Marshal—Lompoc	484

SEC. 5. Section 74645 of the Government Code is amended to read:

74645. (a) It is the purpose of this section to provide compensation for municipal court employees and officers which is comparable to that paid to county employees holding equal or comparable positions in the Santa Barbara classified service as such comparability is determined by the Santa Barbara County Board of Supervisors.

(b) Whenever reference to a numbered salary range is made in any section of this article, the schedule and the salary ordinance of the County of Santa Barbara in effect on January 1, 1987, shall apply.

(c) If the board of supervisors adopts a revised salary schedule for county employees, the new schedule shall apply equally to employees of municipal courts and marshals' offices and conversion to the new schedule shall be made for such employees in the same manner on the same date as for the classified service.

(d) Notwithstanding any of the provisions of this article, the salary and benefits of municipal court employees and officers shall be changed in the same manner and at the same rate as a salary and benefit change is effective for other permanent county classified positions. Employees and officers of the municipal court shall be entitled to all employee benefits as they are provided and made applicable to positions within the classified service pursuant to Santa Barbara County ordinances or resolutions, to the extent that the benefits are not contrary to state law.

(e) All matters affecting the administration of salary and benefits, the selection, appointment, and reclassification of such municipal court officers and employees in those positions which they hold

which are not specifically determined by the provision of state law shall be governed by the personnel ordinances and resolutions of the Board of Supervisors of the County of Santa Barbara.

(f) Nothing in this article shall be construed to place marshals' or clerks' offices, their employees and attachés under the civil service system of Santa Barbara County but such employees and attachés may be placed under that civil service system by court rule adopted by the judges of their respective courts.

(g) Any changes in compensation made pursuant to this section shall be on an interim basis and shall expire January 1 of the second calendar year following such changes unless ratified by the Legislature.

SEC. 6. Section 74647 of the Government Code is amended to read:

74647. (a) The judges of the Santa Barbara Judicial District may appoint two court commissioners. The judges of the Santa Maria Judicial District may appoint one court commissioner.

(b) Commissioners shall be appointed by a majority of the judges of the court or courts, or by the presiding judge of a two-judge court, to which the court commissioner is appointed. Commissioners shall serve at the pleasure of the majority of the judges in the court or courts or at the pleasure of the presiding judges in the court or courts or at the pleasure of the presiding judge in a two-judge court and may be removed by a majority of the judges at their discretion. Within the jurisdiction of the court or courts and under the direction of the judges, commissioners shall exercise all the powers and perform all of the duties authorized by law to be performed by commissioners of superior courts and any additional powers and duties as may be prescribed by law. At the direction of the judges, commissioners may have the same jurisdiction and exercise the same powers and duties as the judges of the court with respect to any infraction or small claims action. The commissioners shall possess the same qualifications the law requires of a municipal court judge and shall not engage in the private practice of law. They shall be ex officio deputy clerks. Commissioners shall receive a salary equal to 85 percent of the salary paid to municipal court judges in Santa Barbara County.

(c) Full-time official reporters appointed by the majority of the judges of the municipal court pursuant to the provisions of Section 72194 and so designated, shall be attachés of the court and shall receive a biweekly salary in accordance with the provisions of Section 70059.7. Such salary shall be paid at the same times and according to the same procedures as salaries of employees of the County of Santa Barbara. During the hours when the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of the duties required of them by law and shall not engage in or solicit to engage in any other employment in their professional capacity.

(d) The judges of the court may appoint as many part-time

additional reporters as the business of the court requires. The additional reporters shall be known as official reporters pro tempore, and they shall serve without salary but shall receive, for reporting, fees at the per diem rate fixed by Section 70059.7. Rates of compensation of regular official reporters and official reporters pro tempore may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the court, provided, however, that any changes in compensation which are made pursuant to this section shall be on an interim basis and shall remain in effect only until January 1, 1989, unless ratified by statute by the Legislature prior to that date. In criminal cases such fees upon order of the court shall be a charge against the general fund of the county.

(e) An official reporter when not engaged in the performance of duties of the municipal court, may be appointed to serve as such reporter for the Santa Barbara County Grand Jury or in any other court in the County of Santa Barbara.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 1115

An act to amend Sections 4010, 4034, 4046, 4047.8, 4049, 4050, 4050.6, 4051, 4080, 4080.1, 4080.2, 4080.3, 4081, 4227, 4227.1, 4229, 4229.5, 4231, 4232, and 4330 of, to add Sections 4034.5, 4035.4, 4050.8, 4227.2, 4386.1, 4387.1, 4392, and 4417 to, and to add Article 5.5 (commencing with Section 4130) to Chapter 9 of Division 2 of, the Business and Professions Code, relating to pharmacy, and making an appropriation therefor.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 4010 of the Business and Professions Code is amended to read:

4010. Except as provided by Section 159.5, the board may employ inspectors of pharmacy. The members of the board and inspectors of pharmacy, whether the inspectors are employed by the board or are in the department's Division of Investigation, may inspect, during business hours, all pharmacies, medical device retailers, dispensaries, stores or places in which drugs are compounded, dispensed or sold. Inspectors of pharmacy whose principal duties are the inspection of pharmacies, and premises operated or conducted by a wholesaler, shall be registered pharmacists.

SEC. 2. Section 4034 of the Business and Professions Code is amended to read:

4034. "Manufacturer" means and includes every person who prepares, derives, produces, compounds, or repackages any drug or device excepting a pharmacy which manufactures on the immediate premises where the drug or device is sold to the ultimate consumer.

SEC. 3. Section 4034.5 is added to the Business and Professions Code, to read:

4034.5. (a) "Medical device retailer" is an area, place, or premises, other than a pharmacy, in and from which dangerous devices are sold, fitted, or dispensed pursuant to prescription. "Medical device retailer" includes, but is not limited to, any area, place, or premises described in a permit issued by the board by reference to plans filed with and approved by the board wherein dangerous devices, as defined, are stored, possessed, prepared, manufactured, or repackaged, and from which the dangerous devices are furnished, sold or dispensed at retail.

(b) "Medical device retailer" shall not include any area in a facility licensed by the State Department of Health Services where floor supplies, ward supplies, operating room supplies, or emergency room supplies of dangerous devices are stored or possessed solely for treatment of patients registered for treatment in the facility or for treatment in the facility or for treatment of patients receiving emergency care in the facilities.

(c) "Dangerous devices" as used in this chapter shall include, but is not limited to, all devices to which any of the following apply:

(1) Devices bearing the legend, "Caution, federal law prohibits dispensing without prescription," or words of similar import.

(2) Devices enumerated in Section 4211.

(3) Hypodermic syringes and needles, or other devices, the sale of which is restricted by law to a registered pharmacist.

(d) For purposes of this chapter, "device" does not include contact lenses.

(e) Neither this section nor any other provision of law shall be construed as prohibiting a medical device retailer from furnishing a prescription device to a licensed health care facility for storage in a secured emergency pharmaceutical supplies container maintained within the facility in accordance with facility regulations of the State Department of Health Services set forth in Title 22 of the California Administrative Code.

SEC. 4. Section 4035.4 is added to the Business and Professions Code, to read:

4035.4. No person other than a registered pharmacist, as defined in Section 4037, or an intern pharmacist, as defined in Section 4038.1, an exempt person, as specified in Section 4050.8, or an authorized officer of the law or a person authorized to prescribe, as provided in Section 4036, shall be permitted in that area, place, or premises described in the permit issued by the board pursuant to Section 4034.5 wherein dangerous devices as therein defined are stored,

possessed, prepared, manufactured, or repacked, except that a registered pharmacist or exemptee shall be responsible for any individual who enters the medical device retailer as described in Section 4034.5 for the purposes of receiving fitting or consultation from the pharmacist or exemptee or (2) any person performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the medical device retailer, if the registered pharmacist or exemptee remains present in the medical device retailer during all times as the individual is present. However, an exemptee need not be present in the warehouse facility of a medical device retailer unless the board establishes that requirement by regulation based upon the need to protect the public.

The board may by regulation establish reasonable security measures consistent with this section in order to prevent unauthorized persons from gaining access to the area, place, or premises or to the dangerous devices therein.

The board may by regulation establish a list of those dangerous devices which may be maintained, dispensed, sold, or furnished only by a pharmacist in a pharmacy. In establishing or modifying that list, the board shall consider factors, including, but not limited to:

(a) The potential for abuse or spread of illness.

(b) The danger to the public if the device is not so restricted.

(c) The potential danger to minors if the device is not so restricted.

The board may, by regulation, establish labeling requirements for dangerous devices sold, fitted, or dispensed by a medical device retailer as it deems necessary for the protection of the public.

SEC. 4.5. Section 4046 of the Business and Professions Code is amended to read:

4046. (a) In recognition of and consistent with the decisions of the appellate courts of this state, the Legislature hereby declares the practice of pharmacy to be a profession.

(b) Pharmacy practice is a dynamic patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and drug-related therapy.

(c) Neither this chapter nor any other provision of law shall be construed to prohibit a registered pharmacist from:

(1) Furnishing to a prescriber a reasonable quantity of compounded medication for prescriber office use.

(2) Transmitting to another registered pharmacist a valid prescription.

(3) Administering, orally or topically, drugs and biologicals pursuant to a prescriber's order.

(4) Performing the following procedures or functions in a licensed health care facility in accordance with policies, procedures, or protocols developed by health professionals, including physicians and surgeons, pharmacists, and registered nurses, with the concurrence of the facility administrator:

(A) Ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration.

(B) Ordering drug therapy related laboratory tests.

(C) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(D) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

As used in this paragraph, "licensed health care facility" means a facility licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or a facility, as defined in Section 1250 of the Health and Safety Code, operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(5) Manufacturing, measuring, fitting to the patient, or selling and repairing, legend medical devices or furnishing instructions to the patient or the patient's representative concerning the use of those devices.

(d) Prior to performing any procedure authorized by paragraph (4) of subdivision (c), a registered pharmacist shall have received appropriate training as prescribed in the policies and procedures of the licensed health care facility.

SEC. 5. Section 4047.8 of the Business and Professions Code is amended to read:

4047.8. Notwithstanding any other provision of law, prescription drugs or devices may be advertised if the advertisement conforms with the requirements of Section 651.3.

SEC. 6. Section 4049 of the Business and Professions Code is amended to read:

4049. "Dispense" means the furnishing of drugs or devices upon a prescription from a physician, dentist, podiatrist or veterinarian.

SEC. 7. Section 4050 of the Business and Professions Code is amended to read:

4050. Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, sell or dispense any dangerous drug or devices, or to dispense or compound any prescription of a medical practitioner unless he or she is a registered pharmacist under the provisions of this chapter.

SEC. 8. Section 4050.6 of the Business and Professions Code is amended to read:

4050.6. Each person applying for an exemption under the provisions of Section 4050.5, 4050.7, or 4050.8 shall pay to the executive officer of the board the fees provided for in subdivision (h) of Section 4416, except that the warehouse of a medical device

retailer, the primary purpose of which is not to dispense dangerous devices to patients but for storage, shall be licensed at fees one-half of those for medical device retailer. There shall be no separate or additional license fee for warehouse premises of a medical device retailer which are physically connected to the retail premises or share common access.

SEC. 9. Section 4050.8 is added to the Business and Professions Code, to read:

4050.8. Section 4050 shall not apply to a medical device retailer if the board finds that sufficient, qualified supervision is employed by the medical device retailer to adequately safeguard and protect the public health. Each person applying for an exemption shall meet the following requirements to obtain and maintain that exemption:

(a) The medical device retailer shall be in charge of an exempt person who has taken and passed an examination administered by the board and whose certificate of exemption is currently valid.

(b) The exempt person shall be on the premises at all times dangerous devices are available for sale or fitting. However, an exemptee need not be present in the warehouse facility of a medical device retailer unless the board establishes that requirement by regulation based upon the need to protect the public.

(c) No renewal certificate shall be issued by the board to an exempt person unless he or she submits proof satisfactory to the board of completion of board approved courses of home health education during the two years preceding the application for renewal consisting of the number of clock hours, not to exceed 30 clock hours, designated by the board. The board may require a certificate holder to complete more than 30 hours of coursework as a condition in connection with any disciplinary action taken against the holder.

(d) Each premises maintained by a medical device retailer shall have a permit issued by the board and shall have an exempt person on the premises if dangerous devices are furnished, sold, or dispensed.

SEC. 10. Section 4051 of the Business and Professions Code is amended to read:

4051. (a) This chapter does not prohibit the dispensing of drugs or dangerous devices by anyone who holds a physician's and surgeon's certificate or a certificate to practice podiatry, and who is duly registered as such by the Board of Medical Quality Assurance or the Board of Osteopathic Examiners of this state, if all of the following conditions are met:

(1) The drugs or dangerous devices are dispensed to the physician's or the podiatrist's own patient and the drugs or dangerous devices are not furnished by a nurse or attendant.

(2) The drugs or dangerous devices are necessary in the treatment of the condition for which the physician or podiatrist is attending the patient.

(3) The physician or podiatrist does not keep a pharmacy, open

shop, drugstore, or medical device retailer, advertised or otherwise, for the retailing of drugs or dangerous devices or poisons.

(4) The physician or podiatrist fulfills all of the labeling requirements imposed upon pharmacists by Section 4047.5, all of the recordkeeping requirements of this chapter, and all of the packaging requirements of good pharmaceutical practice, including the use of child-proof containers. This paragraph shall not prohibit the furnishing of a limited quantity of samples by a physician or podiatrist, if the physician or podiatrist dispenses the samples to the patient in the package provided by the manufacturer, no charge is made to the patient therefor, and an appropriate record is entered in the patient's chart.

(5) The physician or podiatrist does not use a mechanical dispensing device unless he or she personally owns the device and the contents of it and personally dispenses the drugs or dangerous devices to the patient packaged, labeled, and recorded in accordance with paragraph (4).

(b) The Board of Medical Quality Assurance and the Board of Osteopathic Examiners shall have authority with the Board of Pharmacy to assure compliance with this section, and those boards are specifically charged with the enforcement of this chapter with respect to their respective licensees.

SEC. 11. Section 4080 of the Business and Professions Code is amended to read:

4080. No person shall conduct a pharmacy or medical device retailer in the State of California unless he or she has obtained a certificate, license, permit or registration from the board. A certificate, license, permit or registration shall be required for each pharmacy or medical device retailer owned or operated by a specific person. A separate certificate, license, permit, or registration shall be required for each of the premises of any person operating a pharmacy or medical device retailer in more than one location. Such certificate, license, permit or registration shall be renewed annually on or before November 1 of each year and shall not be transferable.

SEC. 12. Section 4080.1 of the Business and Professions Code is amended to read:

4080.1. The board may issue a temporary permit, when the ownership of a pharmacy or medical device retailer is transferred from one person to another, upon such conditions and for such periods of time as the board determines to be in the public interest. A temporary permit fee shall be fixed by the board at an amount not to exceed the annual fee for renewal of a permit to conduct a pharmacy or medical device retailer.

SEC. 13. Section 4080.2 of the Business and Professions Code is amended to read:

4080.2. (a) The board may void the license of a wholesaler or pharmacy or medical device retailer if the licensed premises remains closed, as defined in subdivision (e), other than by order of the board. For good cause shown, the board may void a license after a

shorter period of closure. To void a license pursuant to this subdivision, the board shall make a diligent, good-faith effort to give notice by personal service on the licensee. If no written objection is received within 10 days after personal service is made or a diligent, good-faith effort to give notice by personal service on the licensee has failed, the board may void the license without the necessity of a hearing. If the licensee files a written objection, the board shall file an accusation based on the licensee remaining closed. Proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted in that chapter.

(b) In the event that the license of a wholesaler or pharmacy or medical device retailer is voided pursuant to subdivision (a) or revoked pursuant to Article 9 (commencing with Section 4350), or a wholesaler or pharmacy or medical device retailer notifies the board of its intent to remain closed or to discontinue business, the licensee shall, within 10 days thereafter, arrange for the transfer of all dangerous drugs and controlled substances or dangerous devices to another licensee authorized to possess the dangerous drugs and controlled substances or dangerous devices. The licensee transferring the dangerous drugs and controlled substances or dangerous devices shall immediately confirm in writing to the board that the transfer has taken place.

(c) If a pharmacy or wholesaler or medical device retailer fails to comply with subdivision (b), the board may seek and obtain an order from the superior court in the county in which the pharmacy or wholesaler or medical device retailer is located, authorizing the board to enter the pharmacy or wholesaler or medical device retailer and inventory and store, transfer, sell, or arrange for the sale of, all dangerous drugs and controlled substances in dangerous devices found in the pharmacy or wholesaler or medical device retailer.

(d) In the event that the board sells or arranges for the sale of any dangerous drugs or controlled substances or dangerous devices pursuant to subdivision (c), the board may retain from the proceeds of the sale an amount equal to the cost to the board of obtaining and enforcing an order issued pursuant to subdivision (c). The remaining proceeds, if any, shall be returned to the licensee from whose premises the dangerous drugs or controlled substances or dangerous devices were removed.

The licensee shall be notified of his or her right to the remaining proceeds by personal service or by certified mail, postage prepaid.

Where a statute or regulation requires the licensee to file with the board his or her address, and any change of address, the notice required by this subdivision may be sent by certified mail, postage prepaid, to the latest address on file with the board and service of notice in this manner shall be deemed completed on the 10th day after the mailing.

If the licensee is notified as provided in this subdivision, and the

licensee fails to contact the board for the remaining proceeds within 30 calendar days after personal service has been made or service by certified mail, postage prepaid, is deemed completed, the remaining proceeds shall be deposited by the board into the Pharmacy Board Contingent Fund. These deposits shall be deemed to have been received pursuant to the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure and shall be subject to claim or other disposition as provided in that chapter.

(e) For the purposes of this section, "closed" means not engaged in the ordinary activity for which a license has been issued for at least one day each calendar week during any 120-day period.

(f) Anyone who knowingly violates subdivision (b) is guilty of a misdemeanor.

(g) Nothing in this section shall be construed as requiring a pharmacy to be open seven days a week.

SEC. 14. Section 4080.3 of the Business and Professions Code is amended to read:

4080.3. When, in the opinion of the board, a high standard of patient safety, consistent with good patient care, can be provided by the licensure of a pharmacy or medical device retailer which does not meet all of the requirements for licensure as a pharmacy or medical device retailer, the board may waive any requirements pertaining to minimum equipment, minimum space, sanitary facilities and waiting area.

SEC. 15. Section 4081 of the Business and Professions Code is amended to read:

4081. (a) Each application to conduct a pharmacy or medical device retailer shall be made on a form furnished by the board, and shall state the name, address, usual occupation, and professional qualifications, if any, of the applicant. If the applicant is other than a natural person, the application shall state the information as to each person beneficially interested therein.

(b) As used in this section, and subject to the provisions of subdivision (c), the term "person beneficially interested" means and includes:

(1) If the applicant is a partnership or other unincorporated association, each partner or member.

(2) If the applicant is a corporation, each of its officers, directors, and stockholders, provided that no natural person shall be deemed to be beneficially interested in a nonprofit corporation.

(c) In any case where the applicant is a partnership or other unincorporated association, or is a corporation, and where the number of partners, members, or stockholders, as the case may be, exceeds five, the application shall so state, and shall further state the information required by subdivision (a) as to each of the five partners, members, or stockholders who own the five largest interests in the applicant entity. Upon request by the executive officer, the applicant shall furnish the board with the information

required by subdivision (a) as to partners, members, or stockholders not named in the application, or shall refer the board to an appropriate source of that information.

(d) The application shall contain a statement to the effect that the applicant has not been convicted of a felony and has not violated any of the provisions of this chapter. If the applicant cannot make this statement the application shall contain a statement of the violation, if any, or reasons which will prevent the applicant from being able to comply with the requirements with respect to the statement.

(e) Upon the approval of the application by the board and payment of the fee required by this chapter for each pharmacy, the executive officer of the board shall issue a permit to conduct a pharmacy or medical device retailer under the provisions of Section 4080, if all of the provisions of this chapter have been complied with.

(f) Any other provision of law notwithstanding, the permit shall authorize the holder to conduct a pharmacy and to sell and dispense prophylactics, hypodermics, hypnotics, and poisons. The permit shall be renewed annually on or before November 1 of each year and shall not be transferable, and any change in the beneficial ownership interest of the pharmacy shall be reported within 30 days thereafter upon a form to be furnished by the board.

(g) Any other provision of law notwithstanding, the medical device retailer permit shall authorize the holder thereof to conduct a medical device retailer and to sell and dispense dangerous devices as defined in Section 4211. Any change in the beneficial ownership interest of the pharmacy shall be reported within 30 days thereafter upon a form to be furnished by the board.

SEC. 16. Article 5.5 (commencing with Section 4130) is added to Chapter 9 of Division 2 of the Business and Professions Code, to read:

Article 5.5. Medical Device Retailers

4130. (a) The following minimum standards shall apply to all medical device retailers licensed by the board:

(1) Each retailer shall store dangerous devices in a secure, lockable area consistent with board-approved floor plans and elevations.

(2) Each retailer shall maintain the premises, fixtures, and equipment in a clean and orderly condition.

(3) Each retailer shall maintain the premises in a dry, well-ventilated condition, free from rodents and insects, and with adequate lighting.

(b) The board may, by regulation, impose any other minimum standards pertaining to acquisition, storage, and maintenance of dangerous devices or other goods or to maintenance or condition of the licensed premises of any medical device retailer as the board determines are reasonably necessary.

4131. (a) Each medical device retailer shall have written policies and procedures related to medical device retailer handling and

dispensing of dangerous devices. Those written policies and procedures shall include, but not be limited to:

(1) Training of staff, patients, and caregivers.

(2) Cleaning, storage, and maintenance of dangerous devices and equipment.

(3) Emergency services.

(4) Recordkeeping requirements.

(5) Storage and security requirements.

(6) Quality assurance.

(b) Consultation shall be available to the patient or primary caregiver concerning proper use of dangerous devices and related supplies furnished by the medical device retailer.

(c) Each retailer who sells prosthetic or orthotic dangerous devices on the premises shall have a fitting room, provided, that a fitting room is not required if the dangerous devices sold do not require personal fitting above the biceps of the arm, above the knee or below the neck. The fitting room shall accommodate a fitting table, a chair, and a full length mirror, and be structured to insure patient privacy.

(d) Each retailer shall ensure all personnel of the medical device retailer who engage in the taking of orders for, sale, or fitting of, dangerous devices shall have training and demonstrate initial and continuing competence in the order-taking, fitting, and sale of dangerous devices which the medical device retailer furnishes. The pharmacist-in-charge or exemptee shall be jointly responsible with the owner or owners of the medical device retailer for compliance with the requirement.

(e) Each retailer shall prepare and maintain records of training and demonstrated competence for each individual employed or retained by said retailer. Said records shall be maintained for three years from and after the last date of employment.

(f) Each retailer shall have an ongoing, documented quality assurance program which includes, but is not limited to, the following:

(1) Monitoring personnel performance.

(2) Storage, maintenance, and dispensing of dangerous devices.

(g) The records and documents specified in subdivisions (a) and (f) shall be maintained for three years from the date of making. The records and documents in subdivisions (a), (e), and (f), shall be, at all times during business hours, open to inspection by authorized officers of the law.

4132. Rental dangerous devices and equipment shall, at all times while under control of the medical device retailer, be maintained in a clean and sanitary condition and in good working order, following, where available, manufacturer specifications.

4132.5. Each retailer shall comply with this article on or before July 1, 1991.

SEC. 17. Section 4227 of the Business and Professions Code is amended to read:

4227. (a) No person shall furnish any dangerous drug or device except upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(b) The provisions of this section do not apply to the furnishing of any dangerous drug or device by a manufacturer or wholesaler or pharmacy to each other or to a physician, dentist, podiatrist, or veterinarian, or to a laboratory under sales and purchase records that correctly give the date, the names and addresses of the supplier and the buyer, the drug or device and its quantity.

(c) A registered pharmacist, or a person exempted pursuant to Section 4050.7, may distribute dangerous drugs and devices directly to hemodialysis patients pursuant to regulations promulgated by the board. The board shall promulgate such regulations as are necessary to insure the safe distribution of such drugs and devices to hemodialysis patients without interruption of supply including, but not limited to, the following: vendor licensing, records and labeling, patient receipts, patient training, report records, specific product and quantity limitations, verification order forms, reports and supplies, adequate establishment facilities, and reports to the board. A person who violates a regulation promulgated pursuant to this subdivision shall be liable upon order of the board to surrender his or her personal license. These penalties shall be in addition to penalties which may be imposed pursuant to Sections 4389 and 4350.5. If the board finds any hemodialysis drugs or devices distributed pursuant to this subdivision to be ineffective or unsafe for the intended use, the board may institute immediate recall of any or all of such drugs or devices distributed to individual patients.

(d) Home hemodialysis patients who receive any drugs or devices pursuant to subdivision (c) shall have completed a full course of home training given by a renal dialysis center accredited by the State Department of Health Services. The physician and surgeon prescribing the hemodialysis products shall submit proof satisfactory to the manufacturer or wholesaler that the patient has completed such program.

(e) A registered pharmacist may furnish a dangerous drug authorized for use pursuant to Section 2620.3 to a physical therapist or may furnish a topical pharmaceutical agent authorized for use pursuant to subdivision (e) of Section 3041 to an optometrist. A record containing the date, name and address of the buyer, and name and quantity of the drug shall be maintained. The provisions of this subdivision shall not be construed to authorize the furnishing of a controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.

(f) A medical device retailer shall dispense, furnish, transfer, or sell a dangerous device only to a licensed physician and surgeon, a licensed health care facility, or a patient or his or her personal representative.

SEC. 18. Section 4227.1 of the Business and Professions Code is amended to read:

4227.1. Notwithstanding the provisions of Section 4227 or any other provision of law, a registered pharmacist in good faith may furnish without prescription a dangerous drug or device in reasonable quantities during a state of war emergency, a state of emergency, a local emergency, disaster, earthquake, flood, mudslide, explosion, bombing, nuclear attack, or act of God, to further the health and safety of the public. A record containing the date, name and address of the person to whom the drug or device is furnished, and the name, strength and quantity of the drug or device furnished shall be maintained. The pharmacist shall communicate this information to the patient's attending physician as soon as possible. Notwithstanding the provisions of Section 4230 or any other provision of law, a person may possess a dangerous drug or device furnished without prescription pursuant to this section.

SEC. 19. Section 4227.2 is added to the Business and Professions Code, to read:

4227.2. Except as otherwise provided in this chapter, no person shall furnish a dangerous device except upon prescription of a physician, dentist, podiatrist, or veterinarian.

SEC. 20. Section 4229 of the Business and Professions Code is amended to read:

4229. No prescription for any dangerous drug or device may be refilled except upon authorization of the prescriber which may be given orally or at the time of giving the original prescription. No prescription for any dangerous drug which is a controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code may be designated refillable as needed.

SEC. 21. Section 4229.5 of the Business and Professions Code is amended to read:

4229.5. A prescription for a dangerous drug or device may be refilled without the prescriber's authorization if the prescriber is unavailable to authorize the refill and if, in the pharmacist's professional judgment, failure to refill the prescription might present an immediate hazard to the patient's health and welfare or might result in intense suffering. The pharmacist shall refill only a reasonable amount sufficient to maintain the patient until the prescriber can be contacted. The pharmacist shall note on the reverse side of the prescription the date and quantity of the refill and that the prescriber was not available and the basis for his judgment to refill the prescription without the prescriber's authorization. The pharmacist shall inform the patient that the prescription was refilled without the prescriber's authorization, indicating that the prescriber was not available and that, in the pharmacist's professional judgment, failure to provide the drug or device might result in an immediate hazard to the patient's health and welfare or might result in intense suffering. The pharmacist shall inform the prescriber within a reasonable period of time. Prior to refilling a prescription pursuant to this section, the pharmacist shall make every reasonable effort to contact the prescriber.

The prescriber shall not incur any liability as the result of a refilling of a prescription pursuant to this section.

SEC. 22. Section 4231 of the Business and Professions Code is amended to read:

4231. All stock of any dangerous drug or device of a manufacturer, wholesaler, pharmacy, medical device retailer, physician, dentist, podiatrist, veterinarian, or laboratory, shipments through a customs broker or carrier shall be at all times during business hours open to inspection by authorized officers of the law.

SEC. 23. Section 4232 of the Business and Professions Code is amended to read:

4232. All records of manufacture and of sale, purchase or disposition of dangerous drugs or devices shall be at all times, during business hours, open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, medical device retailer, physician, dentist, podiatrist, or veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 3 (commencing with Section 1620) of Division 2 of, Chapter 2 (commencing with Section 2300) of Division 3 of, or Part 2 (commencing with Section 5699) of Division 6 of, the Welfare and Institutions Code who maintains a stock of dangerous drugs or devices.

The owner, officer, and partner of any pharmacy or medical device retailer shall be jointly responsible, with the pharmacist-in-charge, for maintaining the records and inventory described in this section.

The pharmacist-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee which violate this section and of which the pharmacist-in-charge had no knowledge, or in which he or she did not knowingly participate.

Any person who fails, neglects, or refuses to maintain such records or who, when called upon by an authorized officer or a member of the board, fails, neglects or refuses to produce such records within a reasonable time, or who willfully produces or furnishes records which are false, is guilty of a misdemeanor.

SEC. 24. Section 4330 of the Business and Professions Code is amended to read:

4330. When called upon by an officer, a member of the board, or a duly authorized inspector, the owner or manager of any pharmacy or medical device retailer or other store, shop, building, or premises retailing or storing drugs shall furnish the officer, member or inspector with the names of the owner or owners, manager or managers, and employees together with a brief statement of the capacity in which these persons are employed on the premises.

SEC. 25. Section 4386.1 is added to the Business and Professions

Code, to read:

4386.1. Any person who has obtained a certificate, license, permit, or registration to conduct a medical device retailer and who fails to place in charge of that medical device retailer a registered pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the compounding or dispensing of prescriptions, except by a registered pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

SEC. 26. Section 4387.1 is added to the Business and Professions Code, to read:

4387.1. Any person who is neither a registered pharmacist nor an exemptee and who takes charge of a medical device retailer or who dispenses a prescription or furnishes dangerous devices except as otherwise provided in this chapter is guilty of a misdemeanor.

SEC. 27. Section 4392 is added to the Business and Professions Code, to read:

4392. No building shall have upon it or displayed within it or affixed to or used in connection with it a sign bearing the words "medical device retailer," or words of similar or like import, unless there is upon or within the building a medical device retailer holding a permit issued by the board pursuant to Section 4080.

SEC. 28. Section 4417 is added to the Business and Professions Code, to read:

4417. The fee for a medical device retailer shall be fixed by the board at an amount not to exceed the maximum fee authorized in Section 4416 for a nongovernmental pharmacy.

SEC. 29. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 1116

An act to add Chapter 7.8 (commencing with Section 8698) to Division 1 of Title 2 of the Government Code, relating to emergency shelter, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

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

(a) A fundamental purpose of government is to protect the health

and safety of persons within its jurisdiction.

(b) There exist approximately 75,000 to 100,000 homeless individuals in California, including families and children.

(c) Homelessness is a state which results in a direct threat to the health and safety of its victims, many of whom have died, particularly during severe weather conditions, as a result of this state of homelessness. Persons subject to homelessness are frequent victims of crime.

(d) Homelessness is destructive to the growth and education of children.

(e) Local government entities and state agencies have facilities which can be utilized, on an emergency basis, to house the homeless.

SEC. 2. Chapter 7.8 (commencing with Section 8698) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 7.8. SHELTER CRISIS

8698. For purposes of this chapter, the following definitions shall apply:

(a) "Political subdivision" includes the state, any city, city and county, county, special district, or school district or public agency authorized by law.

(b) "Governing body" means the chief executive or the legislative body, trustees, or director of a political subdivision.

(c) "Public facility" means any facility of a political subdivision including parks, schools, and vacant or underutilized facilities which are owned, operated, or maintained, or any combination thereof, by the political subdivision through money derived by taxation or assessment.

(d) "Declaration of a shelter crisis" means the duly proclaimed existence of a situation in which a significant number of persons are without the ability to obtain shelter, resulting in a threat to their health and safety.

8698.1. Upon a declaration of a shelter crisis, the following provisions shall apply during the period of the emergency.

(a) The political subdivision shall be immune from liability for ordinary negligence in the provision of emergency housing pursuant to Section 8698.2. This limitation of liability shall apply only to conditions, acts, or omissions directly related to, and which would not occur but for, the provision of emergency housing. This section does not limit liability for grossly negligent, reckless, or intentional conduct which causes injury.

(b) The provisions of any state or local regulatory statute, regulation, or ordinance prescribing standards of housing, health, or safety shall be suspended to the extent that strict compliance would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis. Political subdivisions may, in place of such standards, enact municipal health and safety standards to be operative during the housing emergency consistent with ensuring

minimal public health and safety. The provisions of this section apply only to additional public facilities open to the homeless pursuant to this chapter.

8698.2. (a) (1) The governing body may declare a shelter crisis, and may take such action as is necessary to carry out the provisions of this chapter, upon a finding by that governing body that a significant number of persons within the jurisdiction of the governing body are without the ability to obtain shelter, and that the situation has resulted in a threat to the health and safety of those persons.

(2) For purposes of this chapter, the governing body of the state, in making a declaration of a shelter crisis pursuant to paragraph (1), may limit that declaration to any geographical portion of the state.

(b) Upon a declaration of a shelter crisis pursuant to subdivision (a), the political subdivision may allow persons unable to obtain housing to occupy designated public facilities during the duration of the state of emergency.

SEC. 3. The Legislature finds and declares that the provision of emergency housing to persons unable to obtain shelter by local agencies serves a public purpose.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide emergency shelter to persons whose health and safety are threatened in a time of crisis for many people of the State of California, it is necessary that the act take effect immediately.

CHAPTER 1117

An act relating to domestic water systems, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Pursuant to Section 13896.2 of the Water Code, the Department of Water Resources is hereby authorized to make grants from the California Safe Drinking Water Bond Fund in accordance with the California Safe Drinking Water Bond Law of 1986 (Chapter 10.7 (commencing with Section 13895) of Division 7 of the Water Code), to the following agencies for purposes of financing proposed projects and investigations to identify alternatives for system improvements therefor:

(1) Applegate-Clipper Gap County Water District.
(2) Camptonville Community Services District.
(3) City of Firebaugh—Del Rio Water System.
(4) City of Stevinson.
(5) City of Turlock—South First Street Community.
(6) Eagle Lake Community Services District—North.
(7) El Dorado Irrigation District—Service Area #292 (El Dorado Main).
(8) El Dorado Irrigation District—Service Area #293 (Pleasant Oak Main).
(9) El Dorado Irrigation District—Service Area #298 (Rickwalt Line).
(10) El Dorado Irrigation District—Service Area #202 (Strawberry).
(11) Georgetown Divide Public Utility District—Kelsey.
(12) Georgetown Divide Public Utility District—Pilot Hill.
(13) Janesville Community Services District.
(14) Lake, County of—North Lakeport.
(15) Lake, County of—Rocky Point Water System.
(16) Lake, County of—Soda Bay.
(17) Los Banos Unified School District.
(18) Merced County Rehabilitation Center.
(19) Midway Heights County Water District.
(20) Nevada Irrigation District.
(21) Nevada Irrigation District—Forest Park Improvement District.
(22) Nevada Irrigation District—Green Improvement District.
(23) Nevada Irrigation District—Lake Vera Improvement District.
(24) Nevada Irrigation District—Maben-Fickett Improvement District.
(25) Nevada Irrigation District—Rohr-Shanley Improvement District.
(26) Nevada Irrigation District—Sugar Loaf Improvement District.
(27) Nevada Irrigation District—Troost/Hidden Valley Improvement District.
(28) Nevada Irrigation District—Smith-Moulton Improvement District.
(29) Placer County Water Agency.
(30) Ready Springs Unified School District.
(31) Shasta County Water Agency—Debbie Lane/Huntington Drive System.
(32) Shasta County Water Agency—French Gulch Domestic Water System.
(33) Taylorsville County Service Area.
(34) Truckee Donner Public Utility District.
(35) Washington County Water District—Canyon Creek/Henderson.

(36) Berry Creek Community Services District.
(37) City of Firebaugh.
(38) City of Grass Valley.
(39) City of Ukiah.
(40) County of Butte.
(41) County of San Mateo (Pescadero).
(42) County of Shasta (Ono Community Water System).
(43) Indian Wells Valley Water District.
(44) Marysville Joint Unified School District (Brown's Valley Elementary School).
(45) Redwood Valley County Water District.
(46) River Pines Public Utility District.
(47) Sultana Community Services District.
(48) Tulare County Service Area No. 1—Yettem Zone of Benefit.
(49) Tulare County Service Area No. 1—Delph Zone of Benefit.

SEC. 2. The Department of Water Resources shall determine eligibility for and the amount of any grant authorized in this act, in accordance with the California Safe Drinking Water Bond Law of 1986 (Chapter 10.7 (commencing with Section 13895) of Division 7 of the Water Code) and may make those grants in accordance with the bond law.

SEC. 3. The Legislature hereby finds and declares that in order to meet the minimum safe drinking water standards there are critical needs within the entities identified in this act, to immediately undertake certain improvements necessary to enable residents of those communities to have a dependable and potable water supply.

SEC. 4. The Legislature further finds and declares that the water systems of the entities identified in this act, 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 entity is only barely meeting the demand for water within the community.

SEC. 5. Notwithstanding any other provision of law, the City of Corcoran, for the purposes of submitting a proposition to the voters on the question whether the city shall enter into a contract with the state for a loan from the State Water Quality Control Fund (Sec. 13400 et. seq., Water Code), may conduct an all mail ballot election at the earliest opportunity.

The Legislature finds and declares that because of unique circumstances affecting the City of Corcoran a general statute within the meaning of Section 16 of Article IV of the California Constitution cannot be enacted for the purposes of this section. 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, or a loan from the State Water Quality Control Fund, to the entities identified in this act to resolve the critical water supply

and wastewater disposal problems of those communities at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1118

An act to amend Sections 32033, 72245, 72246, 72250.5, 72251, 72252, 72640, 72641, 78930, 81458, and 82305.5 of, and to add and repeal Section 72252.1 of, the Education Code, relating to education.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 32033 of the Education Code, as amended by Chapter 274 of the Statutes of 1984, is amended to read:

32033. The eye protective devices may be sold to the pupils and teachers at a price that shall not exceed the actual cost of the eye protective devices to the school or governing board.

This section shall not apply to the governing board of a community college district; however, this section shall not be construed as prohibiting the governing board of a community college district from offering eye protective devices for sale to students and employees who voluntarily choose to purchase those devices from the district.

This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 2. Section 32033 of the Education Code, as added by Section 2 of Chapter 1010 of the Statutes of 1976, is amended to read:

32033. The eye protective devices may be sold to the pupils and teachers or instructors at a price that shall not exceed the actual cost of the eye protective devices to the school or governing board.

This section shall become operative January 1, 1992.

SEC. 3. Section 72245 of the Education Code is amended to read:

72245. The governing board of a community college district may impose a fee on a participating student for the additional expenses incurred when physical education courses are required to use nondistrict facilities.

This section shall become operative January 1, 1992.

SEC. 4. Section 72246 of the Education Code is amended to read:

72246. (a) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than seven dollars and fifty cents ($7.50) for each semester, and five dollars ($5) for summer school, or five dollars ($5) for each quarter for health supervision and services, including direct or indirect medical and hospitalization

services, or the operation of a student health center or centers, authorized by Section 72244, or both.

(b) If pursuant to this section a fee is required, the governing board of a district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.

(c) The governing board of a district maintaining a community college shall adopt rules and regulations that either exempt low-income students from any fee required pursuant to subdivision (a) or provide for the payment of the fee from other sources. The rules and regulations shall exempt those students receiving financial aid pursuant to Section 72252.1.

(d) The governing board of a district maintaining a community college shall adopt rules and regulations that exempt the following students from any fee required pursuant to subdivision (a):

(1) Students who depend exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization.

(2) Students who are attending a community college under an approved apprenticeship training program.

(e) All fees collected pursuant to this section shall be deposited in the fund of the district designated by the California Community Colleges Budget and Accounting Manual. These fees shall be expended only to provide health services.

Authorized expenditures shall not include, among other things, athletic trainers' salaries, athletic insurance, medical supplies for athletics, physical examinations for intercollegiate athletics, ambulance services and the salaries of health professionals for athletic events, any deductible portion of accident claims filed for athletic team members, or any other expense that is not available to all students. No student shall be denied a service supported by student health fees on account of participation in athletic programs.

(f) Any community college district that provided health services in 1986–87 shall maintain health services at the level provided during the 1986–87 fiscal year in 1987–88 and each fiscal year thereafter. If the cost to maintain that level of service exceeds the limits specified in subdivision (a), the excess cost shall be borne by the community college district.

(g) This section shall become operative January 1, 1988.

SEC. 5. Section 72250.5 of the Education Code is amended to read:

72250.5. The governing board of a community college district may impose a fee, not to exceed one dollar ($1), for the actual pro rata cost for services relative to a program change consisting of adding one or more courses any time after two weeks from the commencement of instruction in any term. The fee shall not be charged for changes initiated or required by the community college.

This section shall become operative January 1, 1992.

SEC. 6. Section 72251 of the Education Code is amended to read:

72251. The governing board of any community college district may impose a late application fee, not to exceed two dollars ($2), for any application for admission or readmission that is filed after the date established by the governing board for the filing of applications for admission or readmission to the community college.

This section shall become operative January 1, 1992.

SEC. 7. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter that begins after January 1, 1988, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall be five dollars ($5) per unit per semester up to a maximum of fifty dollars ($50) per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2

(commencing with Section 69500) of Part 42.

(i) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(j) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1992, deletes or extends that date.

SEC. 8. Section 72252.1 is added to the Education Code, to read:

72252.1. (a) It is the intent of the Legislature to provide adequate funding for the purpose of providing financial aid funds directly to low-income students who cannot pay the fee specified in subdivision (b) of Section 72252 and for the purpose of defraying fees pursuant to subdivision (g) of Section 72252, to be provided as follows:

Period	Amount
July 1, 1988, to June 30, 1989	15,000,000
July 1, 1989, to June 30, 1990	15,000,000
July 1, 1990, to June 30, 1991	15,000,000
July 1, 1991, to January 1, 1992	7,500,000

(b) It is the intent of the Legislature that all funds provided pursuant to subdivision (a) be allocated to community college districts. In prescribing the manner of allocation, the board shall endeavor to ensure that students with similar characteristics shall be treated similarly with respect to the provision of financial aid pursuant to this section, regardless of the community college they attend.

In allocating funds pursuant to this section, the board shall consider the number of students eligible for such assistance in the prior academic year and other factors that may have bearing on the amount of these funds required by each community college district.

The board may allocate up to 7 percent of the total amount of funds provided pursuant to subdivision (a) to community college districts for delivery of student financial aid services required as a result of this section. Funds so allocated to a district for delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1983–84 fiscal year, adjusted annually in accordance with the cost-of-living adjustment to the general apportionments.

The board shall be provided adequate resources through the annual Budget Act to support state administration of this financial aid program.

(c) Financial aid shall be provided pursuant to this section only to those students required to pay the fee specified in Section 72252, and only in an amount equal to the fee actually charged the student pursuant to that section. In addition, the chancellor shall pay districts

the amount of fees defrayed pursuant to subdivision (g) of Section 72252.

(d) Districts that receive an allocation of funds pursuant to this section shall administer and award the funds in accordance with regulations adopted by the board of governors.

(e) If the amount of funds provided pursuant to subdivision (a) exceeds the need for financial aid to students who cannot afford to pay the fee charged pursuant to Section 72252, the excess shall revert to the General Fund.

(f) If the amount needed for financial aid to students who cannot afford the fee charged pursuant to Section 72252 and to pay districts for the total amount of fees defrayed pursuant to subdivision (g) of Section 72252 is greater than the amount of funds provided pursuant to subdivision (a), the chancellor shall certify to the Department of Finance the amount of the additional funds that are required. Upon receipt of this certification, the Director of Finance shall take any administrative action available to him or her to transfer the additional funds, pursuant to the Budget Act or as otherwise provided by the Legislature.

(g) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 9. Section 72640 of the Education Code, as amended by Chapter 274 of the Statutes of 1984, is amended to read:

72640. The governing board of a community college district may:

(a) Conduct field trips or excursions in connection with courses of instruction or school-related social, educational, cultural, athletic, or college band activities to and from places in the state, any other state, the District of Columbia, or a foreign country for students enrolled in a college. A field trip or excursion to and from a foreign country may be permitted to familiarize students with the language, history, geography, natural sciences, and other studies relative to the district's course of study for the pupils.

(b) Engage instructors, supervisors, and other personnel who desire to contribute their services over and above the normal period for which they are employed by the district, if necessary, and provide equipment and supplies for the field trip or excursion.

(c) Transport by use of district equipment, contract to provide transportation, or arrange transportation by the use of other equipment, of students, instructors, supervisors or other personnel to and from places in the state, any other state, the District of Columbia, or a foreign country where the excursions and field trips are being conducted; provided that, when district equipment is used, the governing board shall secure liability insurance, and if travel is to and from a foreign country, the liability insurance shall be secured from a carrier licensed to transact insurance business in the foreign country.

(d) Provide supervision of students involved in field trips or excursions by certificated employees of the district.

No student shall be required to pay a fee to participate in an instructionally related field trip or excursion within the state.

No student shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end, the governing board shall coordinate efforts of community service groups to supply funds for students in need of them.

No group shall be authorized to take a field trip or excursion authorized by this section if any student who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.

No expenses of students participating in a field trip or excursion to any other state, the District of Columbia, or a foreign country authorized by this section shall be paid with district funds. Expenses of instructors, chaperons, and other personnel participating in a field trip or excursion authorized by this section may be paid from district funds, and the district may pay from district funds all incidental expenses for the use of district equipment during a field trip or excursion authorized by this section.

The attendance or participation of a student in a field trip or excursion authorized by this section shall be considered attendance for the purpose of crediting attendance for apportionments from the State School Fund in the fiscal year. Credited attendance resulting from such field trip or excursion shall be limited to the amount of attendance that would have accrued had the students not been engaged in the field trip or excursion. No more contact hours shall be generated by a field trip or excursion than if the class were held on campus.

All persons making the field trip or excursion shall be deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. All adults taking out-of-state field trips or excursions and all parents or guardians of students taking out-of-state field trips or excursions shall sign a statement waiving such claims.

(e) Nothing in this section shall be construed to require the governing board of a community college district to pay the costs of meals, lodging, and other incidental expenses for students participating in field trips and excursions. The costs of meals and lodging are incidental in nature and shall not be applied in determining the funds necessary for a student to participate in a field trip or excursion.

(f) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 10. Section 72640 of the Education Code, as amended by Chapter 797 of the Statutes of 1979, is amended to read:

72640. The governing board of a community college district may:

(a) Conduct field trips or excursions in connection with courses of instruction or school-related social, educational, cultural, athletic, or

college band activities to and from places in the state, any other state, the District of Columbia, or a foreign country for students enrolled in a college. A field trip or excursion to and from a foreign country may be permitted to familiarize students with the language, history, geography, natural sciences, and other studies relative to the district's course of study for the pupils.

(b) Engage instructors, supervisors, and other personnel who desire to contribute their services over and above the normal period for which they are employed by the district, if necessary, and provide equipment and supplies for the field trip or excursion.

(c) Transport by use of district equipment, contract to provide transportation, or arrange transportation by the use of other equipment, of students, instructors, supervisors or other personnel to and from places in the state, any other state, the District of Columbia, or a foreign country where the excursions and field trips are being conducted; provided that, when district equipment is used, the governing board shall secure liability insurance, and if travel is to and from a foreign country, the liability insurance shall be secured from a carrier licensed to transact insurance business in the foreign country.

(d) Provide supervision of students involved in field trips or excursions by certificated employees of the district.

No student shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end, the governing board shall coordinate efforts of community service groups to supply funds for students in need of them.

No group shall be authorized to take a field trip or excursion authorized by this section if any student who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.

No expenses of students participating in a field trip or excursion to any other state, the District of Columbia, or a foreign country authorized by this section shall be paid with district funds. Expenses of instructors, chaperons, and other personnel participating in a field trip or excursion authorized by this section may be paid from district funds, and the district may pay from district funds all incidental expenses for the use of district equipment during a field trip or excursion authorized by this section.

The attendance or participation of a student in a field trip or excursion authorized by this section shall be considered attendance for the purpose of crediting attendance for apportionments from the State School Fund in the fiscal year. Credited attendance resulting from such field trip or excursion shall be limited to the amount of attendance that would have accrued had the students not been engaged in the field trip or excursion. No more contact hours shall be generated by a field trip or excursion than if the class were held on campus.

All persons making the field trip or excursion shall be deemed to have waived all claims against the district or the State of California

for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. All adults taking out-of-state field trips or excursions and all parents or guardians of students taking out-of-state field trips or excursions shall sign a statement waiving such claims.

This section shall become operative January 1, 1992.

SEC. 11. Section 72641 of the Education Code, as amended by Chapter 1 of the Statutes of 1984, Second Extraordinary Session, is amended to read:

72641. The governing board of any community college district conducting excursions and field trips pursuant to this article shall provide, or make available, medical or hospital service, or both, through nonprofit membership corporations defraying the cost of medical service or hospital service, or both, or through group, blanket or individual policies of accident insurance from authorized insurer, for students of the district injured while participating in the excursions and field trips under the jurisdiction of, or sponsored or controlled by, the district or the authorities of any college of the district. The cost of the insurance or membership shall be paid from the funds of the district.

The insurance may be purchased from, or the membership may be taken in, only companies or corporations that are authorized to do business in this state.

This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 12. Section 72641 of the Education Code, as added by Section 2 of Chapter 1010 of the Statutes of 1976, is amended to read:

72641. The governing board of any community college district conducting excursions and field trips pursuant to this article shall provide, or make available, medical or hospital service, or both, through nonprofit membership corporations defraying the cost of medical service or hospital service, or both, or through group, blanket or individual policies of accident insurance from authorized insurer, for students of the district injured while participating in the excursions and field trips under the jurisdiction of, or sponsored or controlled by, the district or the authorities of any college of the district. The cost of the insurance or membership may be paid from the funds of the district, or by the insured student, or his or her parent or guardian.

The insurance may be purchased from, or the membership may be taken in, only companies or corporations that are authorized to do business in this state.

This section shall become operative January 1, 1992.

SEC. 13. Section 78930 of the Education Code is amended to read:

78930. (a) The governing board of a community college district may charge a reasonable fee for instructional materials provided to any student enrolled in its college or colleges. Fees for instructional materials shall be established so as to not exceed the actual cost to

the district in providing the materials, and the materials themselves shall be tangible personal property that is owned or controlled by the student.

(b) "Instructional materials" means all material designed for use by students and their instructors as a learning resource and which help students to acquire facts, skills, or opinions or to develop cognitive processes. Instructional materials may be printed or nonprinted and may include textbooks and educational materials, but not tests. Educational materials are defined to mean any audiovisual or manipulative device including, but not limited to, films, tapes, flashcards, kits, phonograph records, study prints, graphs, charts, and multimedia systems.

(c) This section shall become operative January 1, 1992.

SEC. 14. Section 81458 of the Education Code is amended to read:

81458. The governing board of a community college district may sell to persons enrolled in classes for adults maintained by the district materials that may be necessary for the making of articles by those persons in the classes. The materials shall be sold at not less than the cost thereof to the district and any article made therefrom shall be the property of the person making it.

This section shall become operative January 1, 1992.

SEC. 15. Section 82305.5 of the Education Code is amended to read:

82305.5. The governing board of a community college district may contract for the transportation of matriculated or enrolled adults, or provide transportation to adults in district-owned equipment for educational purposes other than to and from school.

Any district which contracts to provide or provides transportation to adults pursuant to this section may charge adults all or part of the costs of contracting for or providing those transportation services.

This section shall become operative January 1, 1992.

SEC. 16. No reimbursement is required by Section 4 of this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides the local agency or school district with the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of services mandated by Section 4 of this act.

SEC. 17. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that the provisions of this act other than Section 4 contain costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1119

An act to add Section 4746.5 to the Health and Safety Code, and to amend Sections 24.1, 29.1, 29.2, 29.3, and 29.4 of the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), relating to special districts.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 4746.5 is added to the Health and Safety Code, to read:

4746.5. Notwithstanding any other provision of law, the Triunfo County Sanitation District may do all of the following:

(a) The district may, within or without the district:

(1) Take real and personal property of every kind, for any district purpose, by grant, purchase, gift, devise, or lease.

(2) Hold, use, enjoy, lease, or dispose of real and personal property of every kind.

(b) The district may lease from any person, or public corporation or agency, with the privilege of purchasing or otherwise, all or any part of any facilities necessary or convenient to any district purpose, either existing or constructed by the lessor for district use.

(c) If funds are needed to meet current expenses of maintenance and operation, the district may incur indebtedness by the issuance of negotiable promissory notes pursuant to this section, without an election. The notes shall be general obligations of the district payable in the same manner as bonds of the district, shall mature not later than two years from the date thereof, and shall bear interest at a rate not to exceed the rate prescribed by Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, payable as provided therein. The aggregate amount of the notes outstanding at any one time shall not exceed an amount equal to seven cents ($0.07) on each one hundred dollars ($100) of the assessed valuation of the taxable real property within the district as shown on the last equalized assessment roll of the county. If the assessed valuation is not obtainable, the county auditor's estimate of the assessed valuation of the taxable real property within the district for the fiscal year in which the indebtedness is to be incurred shall be used.

All the notes shall be issued after the adoption of a resolution by a four-fifths vote of the district board setting forth the following:

(a) The necessity for the borrowing.

(b) The assessed valuation of the taxable real property within the district, or the auditor's estimate thereof.

(c) The amount of funds to be borrowed.

(d) The date, maturity, denomination, and form of such notes.

The notes shall be signed by the chairperson of the district board and countersigned by the county treasurer and the seal of the district board shall be affixed.

The district board shall cause the board of supervisors to levy and collect taxes to pay the interest on and the principal of the notes as the same comes due and, if the maturity of the notes begins more than one year after the date thereof, to constitute a sinking fund for the payment of the principal thereof at maturity.

Before selling the notes, the district board shall give notice inviting sealed bids in the manner the board prescribes. If satisfactory bids are received, the notes offered for sale shall be awarded to the highest responsible bidder. If no bids are received, or if the district board determines that the bids received are not satisfactory as to price or responsibility of the bidders, the district board may reject all bids received, if any, and either readvertise or sell the notes at private sale.

The district may issue negotiable promissory notes, borrow from the county or a chartered bank, or establish a line of credit with a chartered bank pursuant to this chapter to acquire funds for any district purposes. The promissory notes or indentures shall not mature later than five years from the date of issuance. The maximum rate of interest on the notes shall not exceed the rate prescribed by Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code. The total aggregate amount of the debt outstanding at any time shall not exceed the lesser of four million dollars ($4,000,000) or 3 percent of the total assessed value of all the taxable property in the district, according to the last equalized assessment roll. Promissory notes issued pursuant to Section 4746.5 may be disregarded in computing the aggregate amount of notes that may be issued pursuant to this section.

(d) The district may issue negotiable promissory notes for financing the acquisition of administrative or construction offices and for the acquisition of land for district purposes. The promissory notes shall not mature later than 10 years from the date of issuance. The maximum rate of interest on the notes shall not exceed the rate prescribed by Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code. The total aggregate amount of the notes outstanding at any one time may not exceed the lesser of either two million dollars ($2,000,000) or 1 percent of the total assessed value of all taxable property in the district, according to the last equalized assessment roll. Promissory notes issued pursuant to Section 4746.1 may be disregarded in computing the aggregate amount of notes issued pursuant to this section.

(e) The district may fix on or before the first Monday in August of each fiscal year, a service standby or availability charge in the district, in any portion thereof, in any improvement district, or in any special zone established pursuant to Section 4850, to which a district

service, other than sewage or sanitation service, is available, whether the service is actually used or not. The standby charge levied pursuant to this section shall not exceed fifty dollars ($50) per acre or per parcel less than one acre. This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute which is chaptered before January 1, 1998, deletes or extends that date.

(f) On or before the second Monday in August of each year in which a standby charge is to be levied and collected, the secretary shall furnish to the county auditor the parcel number of each parcel of land within any area, zone, or improvement district upon which a charge is to be levied and collected, together with the amount of the standby charge fixed on each parcel of land subject to levy. The board shall direct that at the time and in the manner required by law for the levying of taxes for county purposes, the board of supervisors shall levy, in addition to any other tax, assessment, or charge it levies, a standby charge in the amounts and on the respective parcels identified by the district secretary. All county officers charged with the duty of collecting, receiving, and disbursing taxes shall collect the district's standby charges with the regular tax payments to the county. Charges fixed by the district shall be liens on all the parcels of land against which those charges have been imposed. Liens for those charges shall be of the same force and effect as liens for taxes, and their collection may be enforced in the same manner as provided for the enforcement of liens for county taxes.

(g) In lieu, in whole or in part, of levying taxes pursuant to Section 4815, the district may levy a connection fee for initiating water service to properties requesting this service, pursuant to Section 54991 of the Government Code. The board of directors may require that the connection fees be collected by the county or city building departments in the manner of building permit fees and transmitted to the district within 30 days of their collection. Unless otherwise authorized by law, the connection fee charged to public entity users shall be limited to the actual direct cost incurred by the district in connecting water or sewage service to the properties owned or occupied by the public entity users and shall not include any component for other construction, operation, and maintenance costs.

SEC. 2. Section 24.1 of the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session) is amended to read:

Sec. 24.1. The agency, by resolution, may annually fix on the basis of benefit a water standby charge within any water service area of the agency to which water is made available. The agency may cause the water standby charge to be applied on an area or parcel basis, or a combination of both, to benefited lands, whether water available is actually used or not. The agency may fix and establish in its adopting resolution appropriate schedules varying the water standby charges within its water service areas according to the land uses and

the degree of availability to affected lands. Availability of water pursuant to this section shall include, without limitation, the agency's contract interests pursuant to the State Water Resources Development System and the agency's property, plant, and distribution facilities. The water standby charge of the agency shall not exceed forty dollars ($40) per acre per year for each acre of land, or forty dollars ($40) per year for any parcel of land less than one acre, within any water service area of the agency. The resolution fixing water standby charges shall be adopted by the board of directors only at or after the annual hearing on the formation of water service areas within the agency. The agency may use the proceeds of the water standby charges only for the annual capital budget of the agency, as described in Section 29.1.

On or before the second Monday in August of each year in which a water standby charge is to be levied and collected for the then current fiscal year, the board of directors shall furnish in writing to the county auditor of each affected county the parcel number of each parcel of land within any water service area within the agency upon which a charge is to be levied and collected, together with the amount of the water standby charge fixed by the agency on each assessed parcel of land subject to the levy. The board shall direct that, at the time and in the manner required by law for the levying of taxes for county purposes, the board of supervisors shall levy, in addition to any other tax, assessment, or charge it levies, a water standby charge in the amounts and on the respective parcels identified by the agency's board. All county officers charged with the duty of collecting, receiving, and disbursing taxes shall collect agency water standby charges with the regular tax payments to the county. The charges shall be collected in the same form and manner as county taxes are collected and shall be paid to the agency. The agency shall reimburse the county for its necessary costs and expenses. Any water service charges fixed by the agency shall be liens against the parcels of land against which those charges have been imposed. Liens for those charges shall be of the same force and effect as liens for taxes, and their collection may be enforced by the same means as provided for the enforcement of liens for either state or county taxes.

SEC. 3. Section 29.1 of the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session) is amended to read:

Sec. 29.1. For any agency fiscal year commencing on or after July 1, 1987, the board of directors shall divide all lands within the agency into separate, nonoverlapping water service areas. The water service areas shall be fixed, formed, and established following a public hearing and notice pursuant to Section 29.3. The purpose for the formation of water service areas is to provide a source of and to apportion moneys, not to exceed the amount permitted annually by law, for, and only for, the annual capital budget of the agency. The funding and apportioning of the capital budget shall be on the principle of benefit received by the lands and people within each

water service area. Projected use of water in any way to be made available by the agency within a water service area during any agency fiscal year, as well as the agency's contract interests pursuant to the State Water Resources Development System and the agency's existing property, plant, and distribution facilities, shall be deemed by the board of directors to be the principal benefits to be considered in determining the proportion of the annual capital budget of the agency to be collected from sources within each water service area. Different schedules of rates, charges, fees, assessments, and taxes to fund the capital budget of the agency, or a portion thereof, may be fixed and established in each water service area, except that tax rates within any individual water service area shall be uniform. The lands within each water service area need not be contiguous.

Any ad valorem tax or tax rate set or determined by the board of directors, though part of the benefit determination process within water service areas, is valid so long as the tax proceeds are applied in accordance with constitutional restrictions. Allocations by the board of directors of the burden of ad valorem taxes between or among water service areas may, at the option of the board of directors, be conducted outside the hearing process set forth and described in Sections 29.2 to 29.4, inclusive.

As used in this act, the "annual capital budget of the agency" means that sum annually projected by the board of directors to be reasonably necessary (1) for payments of capital costs to the State of California, including its agencies or departments, in any way for purposes of the State Water Resources Development System as from time to time amended, (2) for payments for acquisition of other water imported into the agency or for local water, (3) for payments in any way concerning agency bonded indebtedness or for lands and facilities, within or outside the agency, useful or necessary to bank, store, transport, treat, and distribute water currently or eventually to be made available by the agency within water service areas thereof, and (4) for payment to agency budget reserve accounts for the above uses or purposes in future agency fiscal years. Moneys collected by the agency for the "annual capital budget of the agency" shall only be utilized for "capital," as that term is utilized under general accounting principles. The board of directors in its budgetary processes during any fiscal year may shift "capital" moneys between or among "capital" accounts, including reserve accounts. Notwithstanding the foregoing, the annual capital budget of the agency as derived from all water service areas of the agency shall be funded in strict accordance with constitutional and statutory restrictions, as existing from time to time, on legally permissible rates, charges, fees, assessments, and taxes.

SEC. 4. Section 29.2 of the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session) is amended to read:

Sec. 29.2. The board of directors shall annually adopt a resolution of intention to form new water service areas, or to continue, amend,

or modify water service areas previously established. The resolution shall contain all of the following:

(a) The proposed boundary description of each proposed water service area.

(b) The projected benefits to be received by the lands and people within each proposed water service area during a specific, identified agency fiscal year.

(c) The proposed annual capital budget of the agency for that fiscal year, and the portion thereof proposed to be obtained from sources within each proposed water service area.

(d) The proposed charges, fees, assessments, and tax rates proposed to be fixed, levied, or collected within or from each proposed water service area for the proposed annual capital budget of the agency.

(e) The date, time, and location for a public hearing concerning the formation, continuation, amendments, or modification of the water service areas.

SEC. 5. Section 29.3 of the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session) is amended to read:

Sec. 29.3. The board of directors shall annually hold the public hearing concerning its proposed water service areas only after not less than two weeks' notice of the hearing has been given by all of the following means:

(a) Publication of and notice once a week for two weeks, the publications to be seven days apart, in a newspaper of general circulation within the agency published in the county where the agency has its principal office, with the first notice to be published not less than 15 calendar days in advance of the hearing.

(b) Posting of the notice not less than 15 calendar days in advance of the hearing in three public places in each of the proposed water service areas.

(c) Mailing of the notice by first-class mail, postage prepaid, not less than 21 calendar days in advance of the hearing, to each person or entity to whom land is assessed, as shown on the last equalized assessment roll of any county whose territory is within a proposed water service area, at the address shown on the assessment roll, and also to each purveyor. Mailing of the notice to the person or entity to whom land is assessed is not required, however, with respect to any public hearing where the board of directors proposes in the resolution required by Section 29.2 to continue without change any water service area previously established. For the purpose of mailed notice requirements only, a water service area shall be deemed continued without change as previously established if the water service area is proposed to retain over 95 percent of its existing territory, with only such other territories as may be proposed to be included with or excluded from the water service area being subject to the mailed notice requirement.

Notice which is published shall include the text of the agency

resolution concerning water service areas. The published notice need not, however, include any exhibit to the resolution which sets forth or describes boundary descriptions of water service areas which are proposed to be continued without change. All other notices need only include (1) the date, time, and location for the public hearing, and (2) the charges, fees, assessments, and tax rates proposed to affect the specific property proposed to be included within a specific water service area.

Except as otherwise provided in this act, no additional notice need be given on any adjournment or continuation of the public hearing.

SEC. 6. Section 29.4 of the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session) is amended to read:

Sec. 29.4. The board of directors shall at the public hearing concerning water service areas, which hearing may be adjourned and continued from time to time, hear and consider any objections or comments concerning the proposed water service areas as described in the agency's resolution of intention concerning the areas. At or following the hearing, the board of directors may make any changes in the proposals set forth in the resolution of intention that are deemed by the board of directors to be proper; provided, except that if additional land is to be included within or described land is to be excluded from a proposed water service area, or if any proposed described benefit within a proposed water service area is to be materially changed, or if any proposed charge, fee, assessment, or tax rate within a proposed water service area is to be increased by 15 percent or more, the hearing shall be continued for at least 30 days and mailed notice of that continuance shall be given to the affected property owners not waiving that notice by mailing the notice not less than 21 days in advance of the continued hearing.

Absent any need to continue the public hearing, the board of directors shall thereafter find and determine whether it is in the best interest of the agency and each proposed water service area that the water service area be either fixed, formed, and established or continued, modified, or amended. When all those findings and determinations are made, the board of directors shall by resolution do the following:

(a) Determine each water service area and describe the land in that area.

(b) Fix the annual capital budget of the agency.

(c) Describe generally the benefits proposed to be received by the lands and people within each water service area.

(d) Fix, levy, and apportion within each water service area the charges, fees, assessments, and tax rates to be collected therefrom for the purpose of equitably matching those charges, fees, assessments, and tax rates with projected benefits within each water service area.

SEC. 7. With respect to the addition of Section 4746.5 to the Health and Safety Code by Section 1 of this act, the Legislature finds and declares that a special law is necessary and that a general law

cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances faced by the Triunfo County Sanitation District's program of reclaiming waste water for reuse.

CHAPTER 1120

An act to amend Sections 8208, 8286, 8465, 8468.5, 8468.9, 8470, 8473, and 8474 of, to amend and renumber Sections 8480, 8481, 8482, 8483, 8485, 8486, 8490, 8491, and 8492 of, and to add Sections 8473.3, 8473.4, and 8473.5 to, the Education Code, relating to day care services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 8208 of the Education Code is amended to read:

8208. As used in this chapter:

(a) "Assigned reimbursement rate" is that rate established by the contract with the agency and is derived by dividing the total dollar amount of the contract by the minimum child day of average daily enrollment level of service required.

(b) "Alternative payments" includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent's purchase of child care and development services.

(c) "Applicant or contracting agency" means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private non-tax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with the provisions of this chapter.

(d) "Attendance" means the number of children present at a child care and development facility. "Attendance," for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

(e) "Capital outlay" means the amount paid for the renovation

and repair of child care and development facilities to comply with state and local health and safety standards, and the amount paid for the state purchase of relocatable child care and development facilities for lease to qualifying contracting agencies.

(f) "Caregiver" means a person who provides direct care, supervision, and guidance to children in a child care and development facility.

(g) "Child care and development facility" means any residence or building or part thereof in which child care and development services are provided.

(h) "Child care and development programs" means those programs that offer a full range of services for children from infancy to 14 years of age, for any part of a day, by a public or private agency, in centers and family child care homes. These programs include, but are not limited to, all of the following:

(1) Campus child care and development.
(2) General child care and development.
(3) Intergenerational child care and development.
(4) Migrant child care and development.
(5) School-age parenting and infant development.
(6) State preschool.
(7) Resource and referral.
(8) Severely handicapped.
(9) Family day care.
(10) Alternative payment.
(11) Child abuse protection and prevention services.
(12) Schoolage community child care.

(i) "Short-term respite child care" means child care service to assist families whose children have been identified through written referral from a legal, medical, social service agency, or emergency shelter as being neglected, abused, exploited, or homeless, or at risk of being neglected, abused, exploited, or homeless. Child care is provided for less than 24 hours per day in child care centers, treatment centers for abusive parents, family child care homes, or in the child's own home.

(j) "Child care and development services" means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements.

(k) "Children at risk of abuse, neglect, or exploitation" means children who are identified as such in a written referral from a legal, medical, or social service agency, or emergency shelter.

(*l*) "Children with exceptional needs" means children who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multihandicapped,

severely handicapped, or children with specific learning disabilities, who require the special attention of adults in a child care setting. Children with exceptional needs who are between the ages of birth and 21 years, inclusive, shall also meet the criteria for that age group specified in Section 56026.

(m) "Children with special needs" includes infants to the age of two years and 9 months; limited-English-speaking-proficient children; children with exceptional needs; limited-English-proficient handicapped children; and children at risk of neglect, abuse, or exploitation.

(n) "Closedown costs" means reimbursements for all approved activities associated with the closing of operations at the end of each growing season for migrant child development programs only.

(o) "Cost" includes, but is not limited to, expenditures that are related to the operation of child development programs. "Cost" may include a reasonable amount for state and local contributions to employee benefits, including approved retirement programs, agency administration, and any other reasonable program operational costs.

(p) "Elementary school," as contained in Section 425 of Title 20 of the United States Code (the National Defense Education Act of 1958, Public Law 85-864, as amended), includes early childhood education programs and all child development programs, for the purpose of the cancellation provisions of loans to students in institutions of higher learning.

(q) "Severely handicapped children" means children under the age of six years who need intensive special education services and who satisfy the applicable requirements of Section 56026 or 56030.5, and children from ages 6 to 21 years, inclusive, who meet the criteria established by Section 56030.5. These children, ages birth to 21 years, inclusive, may be assessed by public school special education staff, regional center staff, or another appropriately licensed clinical professional.

(r) "Health services" includes, but is not limited to, all of the following:

(1) Referral, whenever possible, to appropriate health care providers able to provide continuity of medical care.

(2) Health screening and health treatment, including a full range of immunization recorded on the appropriate state immunization form to the extent provided by the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and the Child Health and Disability Prevention Program (Article 3.4 (commencing with Section 320) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code), but only to the extent that ongoing care cannot be obtained utilizing community resources.

(3) Health education and training for children, parents, staff, and providers.

(4) Followup treatment through referral to appropriate health

care agencies or individual health care professionals.

(s) "Higher educational institutions" means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing bodies of any accredited private nonprofit institution of postsecondary education.

(t) "Intergenerational staff" means persons of various generations.

(u) "Limited-English-speaking-proficient and non-English-speaking-proficient children" means children who are unable to benefit fully from an English-only child care and development program as a result of either of the following:

(1) Having used a language other than English when they first began to speak.

(2) Having a language other than English predominantly or exclusively spoken at home.

(v) "Parent" means any person living with a child who has responsibility for the care and welfare of the child.

(w) "Program director" means a person who, regardless of his or her title has administrative and programmatic responsibility for a child care and development program operated at two or more sites. These persons shall hold a children's center supervision permit, or its equivalent, as specified in Section 8360, or shall demonstrate progress in meeting these requirements by June 1, 1990, as determined by standards established by the Superintendent of Public Instruction and shall have been employed as a program director as of January 1, 1986.

(x) A "proprietary child care agency" means an organization or facility providing child care, which is operated for profit.

(y) "Resource and referral programs" means programs that provide information to parents, including referrals and coordination of community resources for parents and public or private providers of care. Services frequently include, but are not limited to: technical assistance for providers, toy-lending libraries, equipment-lending libraries, toy- and equipment-lending libraries, staff development programs, health and nutrition education, and referrals to social services.

(z) "Site supervisor" means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall meet the qualifications prescribed by the state licensing regulations for a child care center director. Effective July 1, 1987, these persons shall additionally hold a regular children's center instructional permit, and shall have completed not less than six units of administration and supervision coursework in child development. The Superintendent of Public Instruction may waive the requirements of this subdivision if the Superintendent determines that the existence of compelling need is appropriately documented.

In respect to state preschool programs, a site supervisor may

qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential.

(aa) "Standard reimbursement rate" means that rate established by the Superintendent of Public Instruction pursuant to Section 8265.

(bb) "Startup costs" means those expenses an agency incurs in the process of opening a new or additional facility prior to the full enrollment of children.

(cc) "State preschool services" means part-day educational programs for low-income or otherwise disadvantaged prekindergarten-age children.

(dd) "Support services" means those services which, when combined with child care and development services, help promote the healthy physical, mental, social, and emotional growth of children. Support services include, but are not limited to: protective services, parent training, provider and staff training, transportation, parent and child counseling, child development resource and referral services, and child placement counseling.

(ee) "Teacher" means a person with the appropriate certificate who provides program supervision and instruction which includes supervision of a number of aides, volunteers, and groups of children.

(ff) "Workday" means the time that the parent requires temporary care for a child for any of the following reasons:

(1) To undertake training in preparation for a job.

(2) To undertake or retain a job.

(3) To undertake other activities that are essential to maintaining or improving the social and economic function of the family, are beneficial to the community, or are required because of health problems in the family.

SEC. 1.5. Section 8286 of the Education Code is amended to read:

8286. The Governor shall appoint an advisory committee composed of one representative from the State Board of Education, one representative from the State Social Services Advisory Board, one representative of private education, one representative of child welfare, one representative of private health care, two representatives of proprietary child care agencies, one representative of a community action agency qualified under Title II of the Economic Opportunity Act of 1969, two representatives of family day care homes, five parents of children participating in child care programs of whom at least three shall be parents of children participating in publicly subsidized child development programs, appointed from names selected by a democratic process to assure representation of the parents of children being served, four persons representing professional or civic groups or public or nonprofit private agencies, organizations or groups concerned with child development, one person who administers a public school child care program established pursuant to Article 22 (commencing with Section 8460), one person who administers a county office of education school age child care program established pursuant to

Article 22 (commencing with Section 8460), and one teacher currently serving in a public school children's center.

The advisory committee shall also include one representative from the State Department of Education appointed by the Superintendent of Public Instruction, and one representative each from the Employment Development Department, the State Department of Social Services, the State Department of Health Services, and the State Department of Developmental Services, appointed by the respective director of each department.

The advisory committee shall assist the State Department of Education in developing a state plan for child development programs pursuant to this chapter.

The advisory committee shall continually evaluate the effectiveness of those programs and shall report thereon at each regular session of the Legislature.

SEC. 2. Section 8465 of the Education Code is amended to read:

8465. (a) The superintendent shall adopt regulations for applications for extended day care services contracts for the 1986–87 fiscal year, which applications shall contain at least the following:

(1) A description of the agency.

(2) A general description of the community and schools in the area to be served.

(3) A needs assessment, including the number of children in need, classified by age, grade, ethnicity, and socioeconomic status.

(4) A plan for coordination with county welfare departments and resource and referral programs for the provision of services to participants in the program set forth in Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code and to current and former recipients of benefits under the Aid to Families with Dependent Children program.

(5) A detailed description of the proposed program, including appropriate age group activities, staffing, and facilities.

(6) A detailed budget that demonstrates that the cost of the program is competitive with the cost of local programs that are privately operated.

(7) Evidence of community planning and support.

(8) Any other information deemed necessary to evaluate program quality and cost effectiveness.

(b) The application for funding shall be competitive, in accordance with bidding procedures applicable to contracts under the State Department of Education.

(c) Any applicant with an existing child development contract that evidences noncompliance with fiscal or other program requirements shall be ineligible to apply for funding under this article.

SEC. 3. Section 8468.5 of the Education Code is amended to read:

8468.5. (a) Priority for enrollment in programs supported under this article shall be as follows:

(1) First priority shall be given to recipients of child protective services for children who are neglected or abused, or at risk of being neglected or abused, upon written referral from a legal, medical, social service, or public agency. Within this priority, families with the lowest gross monthly income shall be admitted first. When an agency is unable to enroll a child in need of protective services, the agency shall refer the family to local resource and referral services to locate services for the child.

(2) Second priority shall go to children in kindergarten and grades 1 to 3, inclusive, and their school age siblings under the age of 13, whose families need extended day care services because parents are engaged in vocational training leading directly to a recognized trade, paraprofession or profession; are employed or seeking employment; or are incapacitated. Within this priority, families with the lowest gross monthly income in relation to family size shall be admitted first. Each program shall serve individuals with exceptional needs, as defined in Section 56026. The percentage of children who are individuals with exceptional needs in each program shall at least equal the percentage of children in kindergarten and grades 1 to 8, inclusive, residing in the school district and receiving special education services, unless the demand for this level of service does not exist.

(3) Third priority shall go to children in grades 4 to 9, inclusive, and their school age siblings under the age of 13, whose families need extended day care services because parents are engaged in vocational training leading directly to a recognized trade, paraprofession or profession; are employed or seeking employment; or are incapacitated. Within this priority, families with the lowest gross monthly income in relation to family size shall be admitted first. Each program shall serve individuals with exceptional needs, as defined in Section 56026. The percentage of children who are individuals with exceptional needs in each program shall at least equal the percentage of children in kindergarten and grades 1 to 8, inclusive, residing in the school district and receiving special education services, unless the demand for this level of service does not exist.

(4) To the extent possible, and within the parameters contained in this section, programs should serve a mix of children that reflects substantially the varying socioeconomic, racial, and ethnic backgrounds of the school district in which the agency is located, and a mix of subsidized and nonsubsidized children.

(5) Where compelling need is demonstrated for extended day care exclusively for either grades kindergarten and grades 1 to 3, inclusive, or grades 4 to 9, inclusive, programs may be offered subject to criteria and guidelines as may be established by the State Department of Education including all of the following:

(A) Needs assessment.

(B) Community concurrence.

(C) Cost effectiveness.

(D) Good faith effort to meet the extended day care needs of the siblings of children to be serviced. Nothing in this section alters the priorities specified in this article but is intended, rather, to more effectively meet local needs.

(b) In order for an extended day care program to receive funding, pursuant to this article, for a child served, the child's family shall meet at least one requirement in each of the following areas:

(1) A family shall be one of the following:

(A) A recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(B) Income eligible, with first priority to be given to families with the lowest gross monthly income.

(C) One whose children are recipients of protective services, or whose children have been identified as being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited.

(2) A family shall need the child care service because the requirements of either subparagraph (A) or (B) apply.

(A) The child is identified by a legal, medical, or social service agency as meeting one or more of the following criteria:

(i) The child is a recipient of protective services.

(ii) The child is neglected, abused, or exploited, or at risk of neglect, abuse, or exploitation.

(iii) The child has a medical or psychiatric special need that cannot be met without the provision of extended day care.

(B) The child's parents meet one of the following criteria:

(i) The parents are engaged in vocational training leading directly to a recognized trade, paraprofession, or profession.

(ii) The parents are employed or seeking employment.

(iii) The parents are incapacitated, including a medical or psychiatric need that cannot be met without the provision of extended day care.

(c) The Superintendent of Public Instruction shall establish guidelines according to which the head teacher or a duly authorized representative of the extended day care program shall certify children as eligible for state reimbursement pursuant to this article.

SEC. 4. Section 8468.9 of the Education Code is amended to read:

8468.9. Notwithstanding Sections 8265 and 8266, the cost paid by the state for each child served by a contracting agency operating pursuant to this article shall not exceed the fee paid by the families of nonsubsidized children for the same service offered by the contracting agency.

SEC. 5. Section 8470 of the Education Code is amended to read:

8470. (a) The Superintendent of Public Instruction shall implement a plan that establishes reasonable and cost-effective standards and assigned reimbursement rates. The reimbursement rates established under this section shall be based upon child days of enrollment.

The maximum reimbursement rate for a full year of extended day care service shall not exceed an average of two thousand one hundred dollars ($2,100) per child per year in the 1985–86 fiscal year, as adjusted annually thereafter by the cost-of-living adjustment established by the Legislature for child care services.

(b) The superintendent shall review the implementation of the reimbursement rates, based on child days of enrollment, established for the 1987–88 fiscal year pursuant to subdivision (a), to determine whether the rates are reasonable, cost-effective, and consistent with the goal of increasing the availability of affordable child care services for nonsubsidized children.

(c) After consultation with the Department of Finance and the Legislative Analyst, the superintendent shall, no later than April 15, 1988, develop and disseminate to all contracting agencies reimbursement rate factors for part-time and full-time enrollment that are proposed for use in the 1988–89 fiscal year. No later than June 30, 1988, the superintendent shall adopt reimbursement rate factors for part-time and full-time enrollment, which factors, as may be amended by the superintendent from time to time as he or she deems appropriate, shall be utilized for the 1988–89 fiscal year and each fiscal year thereafter.

(d) Notwithstanding subdivision (a), the Superintendent of Public Instruction shall authorize any contracting agency, that so requests, to continue to receive reimbursement on the basis of child hours of enrollment, rather than on the basis of child days of enrollment, for the remaining portion of the 1987–88 fiscal year.

SEC. 6. Section 8473 of the Education Code is amended to read:

8473. For each program approved for funding pursuant to this article, the Superintendent of Public Instruction shall subsidize no more than 50 percent of the total net program costs or 50 percent of the assigned reimbursement rate multiplied by the total units of services provided, whichever is less. The superintendent shall make the determination required by this section on the basis of child days of enrollment.

SEC. 7. Section 8473.3 is added to the Education Code, to read:

8473.3. No program approved for funding pursuant to this article shall be reimbursed more than the maximum reimbursable amount stated in the contract with the State Department of Education. The maximum reimbursable amount on the contract shall be proportionately adjusted for programs that do not meet the minimum days of operation specified in the contract.

SEC. 8. Section 8473.4 is added to the Education Code, to read:

8473.4. Parent fees for subsidized children shall be used for net reimbursable program costs for subsidized children and shall fund services to subsidized children at a rate not to exceed the assigned reimbursement rate.

SEC. 9. Section 8473.5 is added to the Education Code, to read:

8473.5. Subject to Sections 8473 and 8473.3, an agency operating pursuant to this article shall be reimbursed for net reimbursable

program costs for subsidized children, or for the assigned reimbursement rate multiplied by subsidized units of service, whichever is less, minus subsidized parent fees. Nothing in this article permits the use of any state funding to provide service for families who do not meet the eligibility criteria set forth in subdivision (b) of Section 8468.5.

SEC. 10. Section 8474 of the Education Code is amended to read:

8474. An applicant agency may request a waiver of Section 8473. The Superintendent of Public Instruction may waive the conditions in Section 8473 only when compliance cannot be achieved due to a scarcity of families who do not meet the requirements for subsidization specified in Section 8468.5 and for the fee schedule established under subdivision (e) of Section 8263. The Superintendent of Public Instruction may base these waivers on verified demographic data from the community to be served.

No program shall be granted a waiver under this section for which the total net program costs per child served exceed the mean net cost of community child care for that region per child served by more than 1.5 market standard deviations.

SEC. 11. Section 8480 of the Education Code, as added by Chapter 1440 of the Statues of 1985, is amended and renumbered to read:

8485. The governing board of any school district conducting instruction for pupils in any grade level up to, and including, the completion of junior high school, may establish a program of affordably priced supervision for children before and after school.

SEC. 12. Section 8481 of the Education Code, as added by Chapter 1440 of the Statutes of 1985, is amended and renumbered to read:

8486. Child supervision programs conducted pursuant to this article shall be licensed or exempt programs administered and monitored by the school district. Programs may be staffed by district personnel or may be subcontracted to qualified private or nonprofit agencies, or to other public agencies. Each program shall be designed by administrators of the district to fit the needs at each school or site where a program is conducted.

SEC. 13. Section 8482 of the Education Code is amended and renumbered to read:

8487. Child supervision programs conducted pursuant to this article shall consist of supervised activities including, but not limited to, arts and crafts, sports, quiet games, playground time and snacks, and homework. Computer training may also be made available. Extra enrichment programs and study trips may be made available for a fee that shall be paid by the children's parents or guardians.

SEC. 14. Section 8483 of the Education Code is amended and renumbered to read:

8488. Each school that elects to establish a child supervision program shall apply to the State Department of Education for a grant for each program of up to four thousand dollars ($4,000). Grants for

the new programs established pursuant to this section shall be allocated to programs that meet both of the following requirements:

(a) Have conducted a needs assessment of the local community.

(b) Provide for a viable program plan.

The grants may be used for any of the following: one month's staffing cost, snacks, and the purchase of sports equipment, games, computers, and supplies as indicated by the budget submitted by the district. Once the program is operating, the district shall maintain the program through the fees charged the parents and guardians of the children in the program. The fee may be the same for each child regardless of family income or the number of hours a child participates in the program so that the self-supporting nature of the program is assured. School programs shall seek funding from local business, community, and philanthropic organizations to ensure that no needy child who desires to participate shall be denied the opportunity to participate because of inability to pay the fee. No one who desires to participate in the program shall be denied the opportunity to participate because of inability to pay the fee. The state department shall fund up to 250 programs.

SEC. 15. Section 8485 of the Education Code is amended and renumbered to read:

8477. (a) It is the intent of the Legislature that funds be appropriated for the minor renovation and repair of publicly owned buildings as necessary to meet state licensing standards, and for the state purchase of relocatable child care and development facilities for the purpose of providing extended day care services pursuant to this article, for lease to qualifying agencies in geographic areas with no available child care and development facilities and, as to any child care and development facility acquired by a qualifying agency with funds not including state funds, for the purpose of reimbursement of initial utility service installation costs. A fund is hereby created in the State Treasury, to be known as the State Child Care Facilities Fund. All moneys in the State Child Care Facilities Fund, including any moneys deposited in that fund from any source whatsoever, are hereby continuously appropriated without regard to fiscal year for expenditure pursuant to the provisions of this article. The State Allocation Board may authorize the expenditure of any moneys in the State Child Care Facilities Fund for capital outlay projects pursuant to this article.

(b) No relocatable child care and development facility owned by the state shall be placed on privately owned land except in those areas of the state where the Superintendent of Public Instruction determines there is no available space on publicly owned land and where there are no available child care and development facilities.

(c) The Superintendent of Public Instruction shall establish the qualifications to determine the eligibility of extended day care agencies to lease relocatable facilities under this section.

(d) The Superintendent of Public Instruction shall adopt rules establishing priorities for the acquisition and leasing of facilities to

agencies that will most benefit children needing extended day care services. First priority shall be given to programs that are operated in school districts that have unhoused pupils, as determined under state standards established pursuant to Chapter 22 (commencing with Section 17700) of Part 10, and have developed a plan to provide extended day care services in a cost-effective manner. Each lessee shall be required to demonstrate that relocatable facilities are utilized solely for operation of extended day care services, and to comply with cost-effective minimum program standards established by the superintendent.

(e) The State Allocation Board, with the advice of the Superintendent of Public Instruction, may do all of the following:

(1) Establish any procedures and policies in connection with the administration of this section that it deems necessary.

(2) Adopt any rules and regulations for the administration of this section requiring those procedures, forms, and information that it deems necessary.

(3) Have constructed, furnished, equipped, or otherwise require whatever work is necessary to place relocatable extended day care services facilities where needed.

(f) The board shall lease relocatable facilities to qualifying extended day care services agencies and shall charge rent of one dollar ($1) per year. The board shall require lessees to undertake all necessary maintenance, repairs, renewal, and replacement to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the lessee. Neither the board nor the state shall assume any responsibility for utility services costs other than initial installation costs reimbursed under this article, and the agency shall provide adequate safeguards to protect the state's interest in this regard.

(g) The board shall require lessees to insure at their own expense for the benefit of the state, any leased relocatable facility that is the property of the state, against any risks, including liability from the use thereof, in the amounts the board deems necessary to protect the interests of the state. Neither the board nor the state shall assume any responsibility for utility services costs other than initial installation costs reimbursed under this article, and the agency shall provide adequate safeguards to protect the state's interest in this regard.

(h) No relocatable facilities shall be made available to an agency unless the agency furnishes evidence, satisfactory to the board, that the agency has no other facility available for rental, lease, or purchase in the geographic service area that is economically or otherwise feasible.

(i) The board shall have prepared for its use, performance specifications for relocatable facilities and bids for their construction that can be solicited from more than one responsible bidder. The board shall from time to time solicit bids from, and award to, the lowest responsible competitive bidder, contracts for the construction or purchase of relocatable facilities that have been approved for lease

to eligible extended day care services agencies.

(j) If at any time the board determines that a lessee's need for particular relocatable facilities that were made available to the lessee pursuant to this article has ceased, the board may take possession of the relocatable facilities and may lease them to other eligible contracting agencies, or, if there is no longer a need for the relocatable facilities, the board may dispose of them to public or private parties in the manner it deems to be in the best interests of the state.

(k) If a lessee uses a particular relocatable facility for only a portion of the year, the board may enter into a second lease with a public or private party for the use of that facility for the portion of the year during which the facility would otherwise be unused, in the manner it deems to be in the best interests of the state. The lessee shall be subject to subdivisions (e) and (g).

SEC. 16. Section 8486 of the Education Code is amended and renumbered to read:

8478. The State Allocation Board shall establish regulations for the allocation of funds for capital outlay and for the reimbursement of initial utility installation costs for purposes of this chapter. The Superintendent of Public Instruction shall establish qualifications for determining the eligibility of extended day care agencies to apply for these funds.

SEC. 17. Section 8490 of the Education Code is amended and renumbered to read:

8479. The State Department of Education shall submit a written report to the Legislature by June 30, 1986, documenting the department's progress in implementing this article. The report shall include the number of contracts awarded, the number of contracts awarded to programs based on public school sites, the number of children by age or grade level served in programs funded under this chapter, and any problems with the implementation of this chapter.

SEC. 18. Section 8491 of the Education Code is amended and renumbered to read:

8480. The advisory committee established pursuant to Section 8286 shall perform all of the following functions with regard to this chapter:

(a) Assist the State Department of Education in developing and reviewing guidelines for the administration of this chapter.

(b) Serve in an advisory capacity to the Superintendent of Public Instruction and the Governor for program policy decisions.

(c) Review the implementation of this chapter.

(d) Make written recommendations to the Legislature, the Governor, the State Department of Education, and the State Department of Social Services, by June 30, 1986, with regard to possible improvements to facilitate the implementation of this chapter.

SEC. 19. Section 8492 of the Education Code is amended and renumbered to read:

8481. The Office of the Legislative Analyst shall contract for an independent study of the school age community child care program provided for under this article and shall report the results of the study to the Legislature no later than December 1, 1988. The study shall include, but need not be limited to, program services, cost, staffing, administration, and support services; a review of the maximum reimbursement rate; the relationship between school districts, resource and referral programs, and county welfare departments; the timeliness of the creation of the support for child care; the timeliness of the provision of services; a comparative analysis of program services; and any other factors deemed relevant to the evaluation of the program's attainment of its goals and purposes.

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 to effect changes in the law relating to extended day care services in sufficient time for the State Department of Education to develop and implement regulations in a timely manner, it is necessary that this act take effect immediately.

CHAPTER 1121

An act to amend Sections 25500 and 25502 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 25500 of the Business and Professions Code is amended to read:

25500. (a) No manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person shall:

(1) Hold the ownership, directly or indirectly, of any interest in any on-sale license.

(2) Furnish, give, or lend any money or other thing of value, directly or indirectly, to, or guarantee the repayment of any loan or the fulfillment of any financial obligation of, any person engaged in operating, owning, or maintaining any on-sale premises where alcoholic beverages are sold for consumption on the premises.

(3) Own any interest, directly or indirectly, in the business, furniture, fixtures, refrigeration equipment, signs, except signs for interior use mentioned in subdivision (g) of Section 25503, or lease

in or of any premises operated or maintained under any on-sale license for the sale of alcoholic beverages for consumption on the premises where sold; or own any interest, directly or indirectly, in realty acquired after June 13, 1935, upon which on-sale premises are maintained unless the holding of the interest is permitted in accordance with rules of the department.

(b) This section does not apply to the holding by one person of a wholesaler's license and an on-sale license in counties not to exceed 15,000 population.

(c) This section does not apply to the financial or representative relationship between a manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, or wholesaler, or any officer, director or agent of such person, and a person holding only one of the following types of licenses:

(1) On-sale general license for a bona fide club.

(2) Club license (issued under Article 4 (commencing at Section 23425) of Chapter 3).

(3) Veterans' club license (issued under Article 5 (commencing with Section 23450) of Chapter 3).

(4) On-sale license for boats, trains, sleeping cars or airplanes where the alcoholic beverages produced or sold by the manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, bottler, importer, or wholesaler or any officer, director, or agent of the person are not sold, furnished or given, directly or indirectly to the on-sale licensee.

(d) This section does not apply to an employee of a licensee referred to in subdivision (a) who is a nonadministrative and nonsupervisorial employee.

SEC. 2. Section 25502 of the Business and Professions Code is amended to read:

25502. (a) No manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person, shall, except as authorized by this division:

(1) Hold the ownership, directly or indirectly, of any interest in an off-sale general license.

(2) Furnish, give, or lend any money or other thing of value, directly or indirectly, to, or guarantee the repayment of any loan or the fulfillment of any financial obligation of, any person engaged in operating, owning, or maintaining any off-sale general licensed premises.

(3) Own or control any interest, directly or indirectly, by stock ownership, interlocking directors, or trusteeship, in the business, furniture, fixtures, refrigeration equipment, signs, except signs for interior use mentioned in subdivision (g) of Section 25503, or lease in premises licensed with an off-sale general license.

(4) Own or control any interest, directly or indirectly, by stock ownership, interlocking directors, trusteeship, or mortgage of the

realty upon which an off-sale general licensed premises is maintained.

(b) Any wholesaler in counties not to exceed 15,000 population who holds both a beer and wine wholesaler's license and an off-sale general license and who held such licenses prior to September 19, 1947, may continue to hold such licenses or may transfer either or both licenses to another individual, individuals, partnership, corporation or other legal entity. Where both licenses are simultaneously transferred to an individual, individuals, partnership, corporation or other legal entity, the transfer shall be a person-to-person transfer only.

(c) Nothing in this section prohibits any holder of a distilled spirits manufacturer's, manufacturer's agent's, California winegrower's agent, rectifier's, or wholesaler's license, or any officer, employee, or representative of any such licensee, from acting as a trustee for any off-sale general licensee in any bankruptcy or other proceedings for the benefit of the creditors of the off-sale general licensee.

(d) Nothing in this section shall alter, change, or otherwise affect, retroactively or prospectively, any of the rights or privileges granted to a winegrower or brandy manufacturer by Section 23362, or by any other provision of this division.

(e) This section does not apply to an employee of a licensee referred to in subdivision (a) who is a nonadministrative and nonsupervisorial employee.

SEC. 3. Section 25502 of the Business and Professions Code is amended to read:

25502. (a) No manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person, shall, except as authorized by this division:

(1) Hold the ownership, directly or indirectly, of any interest in an off-sale license.

(2) Furnish, give, or lend any money or other thing of value, directly or indirectly, to, or guarantee the repayment of any loan or the fulfillment of any financial obligation of, any person engaged in operating, owning, or maintaining any off-sale licensed premises.

(3) Own or control any interest, directly or indirectly, by stock ownership, interlocking directors, or trusteeship, in the business, furniture, fixtures, refrigeration equipment, signs, except signs for interior use mentioned in subdivision (g) of Section 25503, or lease in premises licensed with an off-sale license.

(4) Own or control any interest, directly or indirectly, by stock ownership, interlocking directors, trusteeship, or mortgage of the realty upon which an off-sale licensed premises is maintained.

(b) Any wholesaler in counties not to exceed 15,000 population who holds both a beer and wine wholesaler's license and an off-sale general license and who held such licenses prior to September 19, 1947, may continue to hold such licenses but may not transfer the beer and wine wholesaler's license to another individual, individuals,

partnership, corporation or other legal entity. Where the off-sale general license is transferred to an individual, individuals, partnership, corporation or other legal entity, the transfer shall be a person-to-person transfer only.

(c) Nothing in this section prohibits any holder of a distilled spirits manufacturer's, manufacturer's agent's, California winegrower's agent, rectifier's, or wholesaler's license, or any officer, employee, or representative of any such licensee, from acting as a trustee for any off-sale general licensee in any bankruptcy or other proceedings for the benefit of the creditors of the off-sale general licensee.

(d) Nothing in this section shall alter, change, or otherwise affect, retroactively or prospectively, any of the rights or privileges granted to a winegrower or brandy manufacturer by Section 23362, or by any other provision of this division.

(e) This section does not apply to an employee of a licensee referred to in subdivision (a) who is a nonadministrative and nonsupervisorial employee.

SEC. 4. Section 3 of this bill incorporates amendments to Section 25502 of the Business and Professions Code proposed by both this bill and AB 1712. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 25502 of the Business and Professions Code, and (3) this bill is enacted after AB 1712, in which case Section 2 of this bill shall not become operative.

CHAPTER 1122

An act to amend Section 15146 of the Education Code, and to add Section 14669.3 to the Government Code, relating to state property, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1987 Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 15146 of the Education Code is amended to read:

15146. The bonds shall be issued by the board of supervisors, payable out of the interest and sinking fund of the district. The board of supervisors, in its discretion, and without further authorization from the governing board, may sell the bonds at a negotiated sale or by competitive bidding. The bonds may be sold at a discount not to exceed 5 percent and at an interest rate not exceeding the maximum permitted by law. If the sale is by competitive bid, the board of supervisors shall comply with the provisions of Sections 15147 and 15148. The bonds shall be sold by the board of supervisors no later than the date designated by the governing board of the school

district or community college district as the final date for the sale of the bonds. The proceeds of the sale of the bonds, exclusive of any premium received, shall be deposited in the county treasury to the credit of the building fund of the school district, or community college district as designated by the California Community Colleges Budget and Accounting Manual. The proceeds deposited shall be drawn out as other school moneys are drawn out. The bond proceeds withdrawn shall not be applied to any other purposes than those for which the bonds were issued. Any premium or accrued interest received from the sale of the bonds shall be deposited in the interest and sinking fund of the district.

SEC. 2. Section 14669.3 is added to the Government Code, to read:

14669.3. Notwithstanding any other provision of law, the director may enter into a lease-purchase agreement, or a lease with an option to purchase with an initial option purchase price over two million dollars ($2,000,000) only for the property located at 9645 Butterfield Way in the County of Sacramento, for the purpose of refinancing state office and parking facilities, and such other improvements, betterments, and facilities related thereto, for initial occupancy by the Franchise Tax Board and its staff.

Pursuant to Section 5702, the Treasurer is hereby authorized to sell lease revenue bonds, certificates of participation, or any other form of obligations as he or she shall determine in connection with this refinancing. The director and the Treasurer, respectively, shall notify the Chairperson of the Joint Legislative Budget Committee or his or her designee of the intention to enter into the proposed lease-purchase agreement or lease with option to purchase or to sell the obligations authorized in this section, respectively, at least 20 days prior to entering into the agreement or selling these obligations, respectively.

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 for the refinancing of state office and parking facilities to commence as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1123

An act to add Chapter 10.7 (commencing with Section 25930) to Division 20 of the Health and Safety Code, and to amend Section 3460 of the Public Resources Code, relating to toxic substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1987 Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Chapter 10.7 (commencing with Section 25930) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 10.7. WOOD PRESERVATIVES: WOODEN PLAYGROUND AND RECREATION EQUIPMENT

25930. (a) No state funds shall be used by any state agency, onsite employee child care center for state employees, city, county, city and county, district, superintendent of schools, school district, or community college district to purchase wooden playground or recreational equipment where there is a likelihood of contact by children and when the equipment has been treated with any of the following substances:

(1) Pentachlorophenol.

(2) Creosote.

(3) Arsenic, elemental arsenic, or arsenic copper combination, unless the wood is treated with a nontoxic and nonslippery sealer and the seller certifies that the wood is treated in accordance with commodity standard C-17 for playground equipment as adopted by the American Wood-Preservers Association.

(b) The state or any city, county, city and county, district, superintendent of schools, school district, community college district, or onsite employee child care center for state employees which receives education or parks and recreation funds from the state shall not use any portion of these funds for the maintenance or upkeep of any wooden structures treated with any of the substances which are prohibited from purchase pursuant to subdivision (a) and where there is a likelihood of contact by children, unless the state, city, county, city and county, superintendent of schools, school district, district, community college district, or onsite employee child care center for state employees treats the wooden structures with nontoxic and nonslippery sealers and reseals the treated structure in accordance with subdivision (c).

(c) The installer of any wooden playground or recreational equipment which will be available for public use and which has been treated with a substance listed in paragraph (3) of subdivision (a) shall seal the structures with a nontoxic and nonslippery sealant prior

to, or at the time of, the installation of the equipment. After the equipment which is available for public use has been sealed pursuant to this subdivision, the owner of the equipment shall reseal the treated equipment every two years thereafter with a nontoxic and nonslippery sealant.

SEC. 2. Section 3460 of the Public Resources Code is amended to read:

3460. (a) As used in this article:

(1) "Used oil" has the same meaning as defined in subdivision (a) of Section 25250.1 of the Health and Safety Code.

(2) "Recycle" means to prepare used oil for reuse as a petroleum product by refining, reclaiming, reprocessing, or other means, in order to attain the standards specified by subdivision (c) of Section 25250.1 of the Health and Safety Code. "Recycle" does not include the application of used oil to roads for the purpose of dust control or to the ground for the purpose of weed abatement. "Recycle" does not include incineration or burning of used oil as a fuel.

(3) "Board" means the California Waste Management Board.

(4) "Person" means any individual, private or public corporation, partnership, cooperative, association, estate, municipality, political or jurisdictional subdivision, or government agency or instrumentality.

(b) The amendments made to this section at the 1987 portion of the 1987–88 Regular Session of the Legislature do not affect the validity of any existing regulations of the State Department of Health Services relating to the management of used oil blended or diluted with virgin oil or any partially refined oil product as a hazardous waste, and do not affect the authority of the State Department of Health Services to prohibit blending or diluting used oil with an uncontaminated product to achieve the standards for recycled oil, as specified in subdivision (c) of Section 25250.1 of the Health and Safety 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 ensure continuity in the law and to protect the health and safety of children in the state, it is necessary that this act take effect immediately.

CHAPTER 1124

An act to amend Section 16704 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 16704 of the Welfare and Institutions Code is amended to read:

16704. Funds from the County Health Services Fund shall be allocated to the governing body of each county, the City of Berkeley, the City of Long Beach, the City of Pasadena, and each existing local health district annually in accordance with the following procedures:

(a) The allocation of the amount determined in subdivision (a) of Section 16702 and one-third of the amount in paragraphs (2), (3), and (4) of subdivision (c) of Section 16702 shall be made to each governing body of each local jurisdiction upon submission of the plan and budget as required by Section 16700. These funds shall be expended for county health services and public health services for cities as defined in paragraph (5) of subdivision (b).

(b) The allocation of the amounts up to the maximum determined in subdivisions (b), (c), and (d) of Section 16702 shall be made upon application by the governing body of each local jurisdiction and upon signing of an agreement between the governing body and the State Director of Health Services. In the agreement, (1) all local jurisdictions shall agree to expend funds in an aggregate amount at least equal to the total amount designated in the plan and budget submitted pursuant to Section 16700; (2) counties shall agree to net county costs for county health services of county funds in the same amount as the funds requested under this subdivision pursuant to subdivision (b) of Section 16702; (3) counties shall agree to expend one dollar ($1) of county funds for every three dollars ($3) of state funds requested pursuant to subdivision (d) of Section 16702; (4) the City of Berkeley shall agree to expend three dollars ($3) of city funds for every one dollar ($1) of state funds requested pursuant to paragraph (2) of subdivision (c) of Section 16702; and (5) all local health districts shall agree to expend two dollars ($2) of district funds for every one dollar ($1) of state funds requested pursuant to paragraph (3) of subdivision (c) of Section 16702. Funds requested pursuant to subdivision (d) and paragraph (3) of subdivision (c) of Section 16702 shall be expended only for public health services. The City of Long Beach and the City of Pasadena shall agree to expend the allocations received pursuant to paragraph (4) of subdivision (c) of Section 16702 only for public health services, exclusive of animal control and paramedic services.

(c) (1) The allocation of funds appropriated pursuant to

subdivisions (c) and (d) of Section 16703 shall be made upon application by the county board of supervisors. The application shall be in a form and in accordance with procedures and format established by the department. The board shall assure that it will expend such funds only for the health services specified in Sections 14132 and 14021 provided to persons certified as eligible for such services pursuant to Section 17000. Unless the county has entered into a contract with the department under Section 16709 which is effective either for an entire fiscal year, including the 1983–84 fiscal year, or is effective for the period commencing October 1, 1983, and ending on June 30, 1984, the board shall also assure that it will incur no less in net costs of county funds for county health services in any fiscal year than the amount required to obtain the maximum allocation under Section 16702. These assurances shall be incorporated in the agreement specified in subdivision (b). In no event shall such funds be expended for costs of services specified in county Short-Doyle plans which are in excess of the 125 percent limitation specified in Section 5705.1.

(2) A county may reduce the amount of net costs of county funds for county health services required pursuant to paragraph (1) of subdivision (c) to the extent such reduction has been permitted pursuant to the provisions of Section 16705 or 16705.5, provided that, for fiscal year 1982–83 only, the provisions of Section 16705 shall not be operative, except for counties which received approval for reductions pursuant to this section in prior fiscal years.

(3) Any person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided. Such persons may be held financially liable for these services based upon the person's ability to pay. A county may not establish a payment requirement which would deny medically necessary services. This section shall not be construed to mandate that a county provide any specific level or type of health care service or to preclude a county from utilizing its own forms for the purpose of identifying persons eligible for county health care services. The Board of Control shall not honor any claims by a local agency for reimbursement of costs under this section. The provisions of this paragraph shall become inoperative if a court ruling is issued which decrees that the provisions of this paragraph mandate that additional state funds be provided and which requires that additional state reimbursement be made to counties for costs incurred under this paragraph. This paragraph shall be operative only until June 30, 1985, unless a later enacted statute extends or deletes that date.

(d) The agreement shall provide for reports of expenditures and information and shall constitute a contractual obligation. The State Director of Health Services shall not have the authority to disapprove the county health services plan or to require the additional expenditure of county, city, or district funds for health

services beyond that required by this section and Section 16707.

(e) The local jurisdiction shall act in general accordance with the plan and budget submitted pursuant to Section 16700.

(f) Notwithstanding any other provision of this part, there shall be no increase in the amount of county funds required pursuant to paragraph (2) of subdivision (b) as a result of the implementation of paragraphs (4), (5) and (6) of subdivision (c) of Section 16702.

CHAPTER 1125

An act to amend Section 1428 of, and to add Section 1418.3 to, the Health and Safety Code, relating to health facilities.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 1418.3 is added to the Health and Safety Code, to read:

1418.3. (a) Each licensed skilled nursing facility shall, when requested by a member of a patient's family, allow the family to meet privately with a family member who is a resident in the facility.

(b) "Family member" for the purposes of this section means an immediate family member or family member designated and documented on the patient's record at the time of admission to the facility.

SEC. 2. Section 1428 of the Health and Safety Code is amended to read:

1428. (a) If a licensee desires to contest a class "AA" or a class "A" citation, or a citation alleging a class "B" violation and either a class "AA" or class "A" violation or the proposed assessment of a civil penalty therefor, the licensee shall within five business days after service of the citation notify the director in writing of his or her request for a citation review conference with the designee of the director for the county in which the cited long-term health care facility is located. The director's designee shall hold, within five business days from the receipt of the request, a citation review conference, at the conclusion of which he or she may affirm, modify, or dismiss the citation or proposed assessment of a civil penalty. If the director's designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action, and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within five business days after he or she receives the decision by the director's designee. If the licensee fails to notify the director

in writing that he or she intends to contest the citation or the proposed assessment of a civil penalty therefor or the decision made by a director's designee after a citation review conference within the time specified in this subdivision, the citation or the proposed assessment of a civil penalty or the decision by a director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review.

(b) If a licensee notifies the director that he or she intends to contest a class "AA" or a class "A" citation, or a citation alleging a class "B" violation and either a class "AA" or class "A" violation, the director shall immediately notify the Attorney General. Upon notification, the Attorney General shall promptly take all appropriate action to enforce the citation and recover the civil penalty prescribed thereon, and shall take such other action as the Attorney General shall deem appropriate, in the court of competent jurisdiction for the county in which the long-term health care facility is located.

(c) If a licensee desires to contest a class "B" citation or the proposed assessment of a civil penalty therefor, the licensee shall within five business days after service of the citation (1) notify the director in writing of his or her request for a citation review conference with the designee of the director for the county in which the cited long-term health care facility is located; or (2) notify the director in writing of the licensee's intent to adjudicate the validity of the citation in the municipal court in the county in which the long-term health care facility is located. If requested by the licensee, the director's designee shall hold, within five business days from the receipt of the request, a citation review conference, at the conclusion of which he or she may affirm, modify, or dismiss the citation or the proposed assessment of a civil penalty. If the director's designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within five business days after he or she receives the decision by the director's designee. In order to perfect a judicial appeal of a contested citation, a licensee shall file a civil action in the municipal court in the county in which the long-term health care facility is located. The action shall be filed no later than 60 calendar days after a licensee notifies the director that he or she intends to contest a citation, and served no later than 60 days thereafter, or, in the event a citation review conference is held, no later than 60 calendar days after a licensee notifies the director of his or her intent to contest the decision of the director's designee. If a judicial appeal is prosecuted under the provisions of this subdivision, the state department shall have the burden of establishing by a preponderance of the evidence that (1) the alleged

violation did occur, (2) the alleged violation met the criteria for the class of citation alleged, and (3) the assessed penalty was appropriate. The state department shall also have the burden of establishing by a preponderance of the evidence that the assessment of a civil penalty should be upheld. If a licensee fails to notify the director in writing that he or she intends to contest the citation or the decision made by the director's designee within the time specified in this subdivision, or fails to file a civil action within the time specified in this subdivision, the citation or the decision by the director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review. If a licensee prosecutes a judicial appeal of a contested citation or the assessment of a civil penalty, no civil penalty shall be due and payable unless and until the appeal is terminated in favor of the state department. Notwithstanding any other provision of law, for those citations filed after January 1, 1988, a licensee prosecuting a judicial appeal shall file and serve an at issue memorandum pursuant to Rule 209 of the California Rules of Court by July 1, 1988, or within six months after the state department files its answer in the appeal, whichever is later. The court shall dismiss the appeal upon motion of the state department if the at issue memorandum is not filed by the facility within the period specified.

(d) The director or the director's designee shall establish an independent unit of trained citation review conference hearing officers within the state department to conduct citation review conferences. Citation review conference hearing officers shall be directly responsible to the deputy director for licensing and certification, and shall not be concurrently employed as supervisors, district administrators, or regional administrators with the licensing and certification division. Specific training shall be provided to members of this unit on conducting an informal conference, with emphasis on the regulatory and legal aspects of long-term health care.

Where the state department issues a citation as a result of a complaint or regular inspection visit, and a resident or residents are specifically identified in a citation by name as being specifically affected by the violation, then the following persons may attend the citation review conference:

(1) The complainant and his or her designated representative.

(2) A personal health care provider, designated by the resident.

(3) A personal attorney, only if the long-term health care facility has an attorney present.

(4) Any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code.

Where the state department determines that residents in the facility were threatened by the cited violation but does not name specific residents, any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of

Section 9701 of the Welfare and Institutions Code, and a representative of the residents or family council at the facility may participate to represent all residents. In this case, these representatives shall be the sole participants for the residents in the conference. The residents' council shall designate which representative will participate.

The complainant, affected resident, or their designated representatives shall be notified by the state department of the conference and their right to participate. The director's designee shall notify the complainant or his or her designated representative and the affected resident or his or her designated representative, of his or her determination based on the citation review conference.

(e) In assessing the civil penalty for a violation, all relevant facts shall be considered, including, but not limited to, all of the following:

(1) The probability and severity of the risk which the violation presents to the patient's mental and physical condition.

(2) The patient's medical condition.

(3) The patient's mental condition and his or her history of mental disability.

(4) The good-faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(f) Except as otherwise provided in this subdivision, an assessment of civil penalties for a class "A" or class "B" violation shall be trebled and collected for a second or subsequent violation occurring within any 12-month period, if a citation was issued and a civil penalty assessed for the previous violation occurring within the period, without regard to whether the action to enforce the previous citation has become final. However, the increment to the civil penalty required by this subdivision shall not be due and payable unless and until the previous action has terminated in favor of the state department.

If the class "B" violation is a patient's rights violation, as defined in subdivision (d) of Section 1424, it shall not be trebled unless the state department determines the violation has a direct or immediate relationship to the health, safety, security, or welfare of long-term health care facility residents.

(g) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to safety or health.

(h) Actions brought under this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing any such proceeding shall be set by the judge of the court with the object of securing a decision as to subject matters at the earliest possible time.

(i) If the citation is dismissed or reduced, the state department shall take action immediately to ensure that the public records

reflect in a prominent manner that the citation was dismissed or reduced.

(j) Upon a licensee notifying the director of its intent to contest one or more citations or decisions made following a citation review conference where the total penalties do not exceed fifteen thousand dollars ($15,000), either the state or the licensee may elect to submit the matter to binding arbitration. The parties shall agree upon an arbitrator designated from the American Arbitration Association in accordance with the association's established rules and procedures. The arbitration hearing shall be set within 45 days of the petitioner's election, but in no event less than 28 days from the date of selection of an arbitrator. The arbitration hearing may be continued up to 15 additional days if necessary at the arbitrator's discretion. The decision of the arbitrator shall be based upon substantive law and shall be binding on all parties, subject to judicial review. This review shall be limited to whether there was substantial evidence to support the decision of the arbitrator.

The arbitrator shall determine which of the parties are financially liable for arbitration costs based upon the position each took at the commencement of the arbitration proceedings compared to the decision of the arbitrator.

The retention of, renewal of, or application for, a license to operate a skilled nursing facility or intermediate care facility shall, for purposes of the administration of this chapter, be deemed a written agreement to arbitrate contested citations within the meaning of Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure. Without extending the time for commencement of these hearings, the provisions of Section 1283.05 of the Code of Civil Procedure shall be applicable to all proceedings to arbitrate citations issued pursuant to this chapter, except that depositions may be noticed and taken without prior approval of the arbitrator.

Penalties paid on violations under this chapter shall be applied against the state department's accounts to offset any costs incurred by the state pursuant to this subdivision. Any costs or penalties assessed pursuant to this chapter shall be paid within 30 days of the date the decision becomes final. If a facility does not comply with this provision, the state department shall withhold any payment under the Medi-Cal program until the debt is satisfied. No payment shall be withheld if the state department determines that it would cause undue hardship to the facility or to patients of the facility.

SEC. 2.5. Section 1428 of the Health and Safety Code is amended to read:

1428. (a) If a licensee desires to contest a class "AA" or a class "A" citation, or a citation alleging a class "B" violation and either a class "AA" or class "A" violation or the proposed assessment of a civil penalty therefor, the licensee shall within five business days after service of the citation notify the director in writing of his or her request for a citation review conference with the designee of the director for the county in which the cited long-term health care

facility is located. The director's designee shall hold, within five business days from the receipt of the request, a citation review conference, at the conclusion of which he or she may affirm, modify, or dismiss the citation or proposed assessment of a civil penalty. If the director's designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action, and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within five business days after he or she receives the decision by the director's designee. If the licensee fails to notify the director in writing that he or she intends to contest the citation or the proposed assessment of a civil penalty therefor or the decision made by a director's designee after a citation review conference within the time specified in this subdivision, the citation or the proposed assessment of a civil penalty or the decision by a director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review.

(b) If a licensee notifies the director that he or she intends to contest a class "AA" or a class "A" citation, or a citation alleging a class "B" violation and either a class "AA" or class "A" violation, the director shall immediately notify the Attorney General. Upon notification, the Attorney General shall promptly take all appropriate action to enforce the citation and recover the civil penalty prescribed thereon, and shall take such other action as the Attorney General shall deem appropriate, in the court of competent jurisdiction for the county in which the long-term health care facility is located.

(c) If a licensee desires to contest a class "B" citation or the proposed assessment of a civil penalty therefor, the licensee shall within five business days after service of the citation (1) notify the director in writing of his or her request for a citation review conference with the designee of the director for the county in which the cited long-term health care facility is located; or (2) notify the director in writing of the licensee's intent to adjudicate the validity of the citation in the municipal court in the county in which the long-term health care facility is located. If requested by the licensee, the director's designee shall hold, within five business days from the receipt of the request, a citation review conference, at the conclusion of which he or she may affirm, modify, or dismiss the citation or the proposed assessment of a civil penalty. If the director's designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within five business days

after he or she receives the decision by the director's designee. In order to perfect a judicial appeal of a contested citation, a licensee shall file a civil action in the municipal court in the county in which the long-term health care facility is located. The action shall be filed no later than 60 calendar days after a licensee notifies the director that he or she intends to contest a citation, and served no later than 60 days thereafter, or, in the event a citation review conference is held, no later than 60 calendar days after a licensee notifies the director of his or her intent to contest the decision of the director's designee. If a judicial appeal is prosecuted under the provisions of this subdivision, the state department shall have the burden of establishing by a preponderance of the evidence that (1) the alleged violation did occur, (2) the alleged violation met the criteria for the class of citation alleged, and (3) the assessed penalty was appropriate. The state department shall also have the burden of establishing by a preponderance of the evidence that the assessment of a civil penalty should be upheld. If a licensee fails to notify the director in writing that he or she intends to contest the citation or the decision made by the director's designee within the time specified in this subdivision, or fails to file a civil action within the time specified in this subdivision, the citation or the decision by the director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review. If a licensee prosecutes a judicial appeal of a contested citation or the assessment of a civil penalty, no civil penalty shall be due and payable unless and until the appeal is terminated in favor of the state department. Notwithstanding any other provision of law, for those citations filed after January 1, 1988, a licensee prosecuting a judicial appeal shall file and serve an at issue memorandum pursuant to Rule 209 of the California Rules of Court by July 1, 1988, or within six months after the state department files its answer in the appeal, whichever is later. The court shall dismiss the appeal upon motion of the state department if the at issue memorandum is not filed by the facility within the period specified.

(d) The director or the director's designee shall establish an independent unit of trained citation review conference hearing officers within the state department to conduct citation review conferences. Citation review conference hearing officers shall be directly responsible to the deputy director for licensing and certification, and shall not be concurrently employed as supervisors, district administrators, or regional administrators with the licensing and certification division. Specific training shall be provided to members of this unit on conducting an informal conference, with emphasis on the regulatory and legal aspects of long-term health care.

Where the state department issues a citation as a result of a complaint or regular inspection visit, and a resident or residents are specifically identified in a citation by name as being specifically affected by the violation, then the following persons may attend the

citation review conference:

(1) The complainant and his or her designated representative.

(2) A personal health care provider, designated by the resident.

(3) A personal attorney, only if the long-term health care facility has an attorney present.

(4) Any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code.

Where the state department determines that residents in the facility were threatened by the cited violation but does not name specific residents, any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code, and a representative of the residents or family council at the facility may participate to represent all residents. In this case, these representatives shall be the sole participants for the residents in the conference. The residents' council shall designate which representative will participate.

The complainant, affected resident, or their designated representatives shall be notified by the state department of the conference and their right to participate. The director's designee shall notify the complainant or his or her designated representative and the affected resident or his or her designated representative, of his or her determination based on the citation review conference.

(e) In assessing the civil penalty for a violation, all relevant facts shall be considered, including, but not limited to, all of the following:

(1) The probability and severity of the risk which the violation presents to the patient's mental and physical condition.

(2) The patient's medical condition.

(3) The patient's mental condition and his or her history of mental disability.

(4) The good-faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(f) Except as otherwise provided in this subdivision, an assessment of civil penalties for a class "A" or class "B" violation shall be trebled and collected for a second or subsequent violation occurring within any 12-month period, if a citation was issued and a civil penalty assessed for the previous violation occurring within the period, without regard to whether the action to enforce the previous citation has become final. However, the increment to the civil penalty required by this subdivision shall not be due and payable unless and until the previous action has terminated in favor of the state department.

If the class "B" violation is a patient's rights violation, as defined in subdivision (d) of Section 1424, it shall not be trebled unless the state department determines the violation has a direct or immediate relationship to the health, safety, security, or welfare of long-term health care facility residents.

(g) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to safety or health.

(h) Actions brought under this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing any such proceeding shall be set by the judge of the court with the object of securing a decision as to subject matters at the earliest possible time.

(i) If the citation is dismissed or reduced, the state department shall take action immediately to ensure that the public records reflect in a prominent manner that the citation was dismissed or reduced.

(j) Upon a licensee notifying the director of its intent to contest one or more citations or decisions made following a citation review conference where the total penalties do not exceed fifteen thousand dollars ($15,000), either the state or the licensee may elect to submit the matter to binding arbitration. The parties shall agree upon an arbitrator designated from the American Arbitration Association in accordance with the association's established rules and procedures. The arbitration hearing shall be set within 45 days of the petitioner's election, but in no event less than 28 days from the date of selection of an arbitrator. The arbitration hearing may be continued up to 15 additional days if necessary at the arbitrator's discretion. The arbitrator's decision shall specify, in writing, the areas of disagreement between the parties, the evidence upon which the decision is based, and the reasons for the decision. The decision of the arbitrator shall be based upon substantive law and shall be binding on all parties, subject to judicial review. This review shall be limited to whether there was substantial evidence to support the decision of the arbitrator.

The arbitrator shall determine which of the parties are financially liable for arbitration costs based upon the position each took at the commencement of the arbitration proceedings compared to the decision of the arbitrator.

The retention of, renewal of, or application for, a license to operate a skilled nursing facility or intermediate care facility shall, for purposes of the administration of this chapter, be deemed a written agreement to arbitrate contested citations within the meaning of Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure. Without extending the time for commencement of these hearings, the provisions of Section 1283.05 of the Code of Civil Procedure shall be applicable to all proceedings to arbitrate citations issued pursuant to this chapter, except that depositions may be noticed and taken without prior approval of the arbitrator.

Penalties paid on violations under this chapter shall be applied against the state department's accounts to offset any costs incurred by the state pursuant to this subdivision. Any costs or penalties

assessed pursuant to this chapter shall be paid within 30 days of the date the decision becomes final. If a facility does not comply with this provision, the state department shall withhold any payment under the Medi-Cal program until the debt is satisfied. No payment shall be withheld if the state department determines that it would cause undue hardship to the facility or to patients of the facility.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 1428 of the Health and Safety Code proposed by both this bill and SB 212. It shall only become operative if (1) both bills are chaptered and become effective January 1, 1988, (2) each bill amends Section 1428 of the Health and Safety Code, and (3) this bill is chaptered after SB 212, in which case Section 2 of this bill shall not become operative.

CHAPTER 1126

An act to amend and repeal Section 16709 of the Welfare and Institutions Code, relating to fiscal affairs.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 16709 of the Welfare and Institutions Code, as amended by Chapter 1119 of the Statutes of 1985, is amended to read:

16709. (a) The board of supervisors of a county with a population under 300,000, as determined in accordance with the 1980 decennial census, may enter into a contract with the department and the department may enter into a contract with that county under which the department agrees to administer the program responsibilities for specified health services to county residents certified eligible for those services by the county. Any county may also elect to act jointly on a regional basis with other counties in assuming the program responsibilities and claim state funds on a joint basis.

(b) For the period from January 1, 1983, to June 30, 1983, each county intending to contract with the department pursuant to this section shall submit to the department a notice of intent to contract adopted by the board of supervisors no later than November 15, 1982. For each fiscal year thereafter, a notice adopted by the board of supervisors shall be submitted no later than April 1 of the fiscal year preceding the fiscal year for which the agreement will be in effect in accordance with procedures established by the department.

(c) A county contracting with the department pursuant to this section shall not be relieved of its indigent health care obligation under Section 17000.

(d) The department shall establish the County Medical Services

Program Account, hereinafter referred to as the program account, in the County Health Services Fund. The following amounts may be deposited in the account:

(1) Moneys allotted under subdivisions (c) and (d) of Section 16703 to each county electing to contract with the department under this section.

(2) Any interest earned upon money deposited in the account.

(3) Any other additional moneys provided by participating counties or appropriated by the Legislature to the account.

(e) Moneys in the account specified in subdivision (d) shall be used by the department for both of the following purposes:

(1) To pay for health care services provided to the county residents meeting the eligibility criteria established pursuant to subdivision (j).

(2) To defray the department's administrative costs incurred in implementing this section. Costs for administering this section shall be borne by the participating counties out of the account specified in subdivision (d).

For costs of the initial implementation of this section, which are incurred prior to signing contracts with the counties, the department is authorized to transfer up to five hundred thousand dollars ($500,000) from Item 4260-101-001(b) to Item 4260-101-001(c) to fund fiscal intermediary changes and to Item 4260-001-001 to fund additional staff. The funds shall be repaid from the account specified in subdivision (d) to the General Fund by June 30, 1984. Any change order to the Medi-Cal fiscal intermediary contract that is required to carry out this section shall be exempted from the 30-day notice to the Legislature required by the Budget Act of 1982, Section 2, Item 4260-101-001, provision 22. This change order shall be exempt from the Department of General Services review and approval. The funds shall be repaid by funds specified in subdivision (e) to the General Fund by June 30, 1984. Transfer of funds shall be subject to Department of Finance approval and legislative notification.

(f) Moneys in this account shall be administered on an accrual basis and notwithstanding any other provision of law, except as provided in this section, shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from the investment shall be deposited in the Program Account, at the end of the 1982–83 fiscal year and every six months thereafter, notwithstanding Section 16305.7 of the Government Code. All this interest shall be available to reimburse program-covered services, or for expenditure to augment the program's rates, benefits, or eligibility criteria pursuant to subdivision (j).

(g) The department shall establish a separate County Medical Services Program Reserve Account, hereinafter referred to as the reserve account, in the County Health Services Fund. Six months

after the end of the 1982–83 fiscal year and thereafter, six months after the end of each fiscal year, any projected savings in the program account shall be transferred to the reserve account, with final settlement occurring no more than 12 months later. Moneys in this account shall be utilized when expenditures for health services made pursuant to subdivision (j) for a fiscal year exceed the amount of funds available in the program account for that fiscal year. When funds in the reserve account are estimated to exceed 10 percent of the total allocation available for health services made pursuant to subdivisions (c) and (d) of Section 16703 for all counties electing to contract with the department under this section for the fiscal year, the additional funds shall be available for expenditure to augment the rates, benefits, or eligibility criteria pursuant to subdivision (j).

(h) Moneys in the program account and the reserve account shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from investment shall be deposited in the program account, notwithstanding Section 16705.7 of the Government Code.

(i) Moneys appropriated pursuant to subdivisions (c) and (d) of Section 16703 for counties electing to contract with the department pursuant to this section shall be deposited monthly as provided in subdivision (b) of Section 16706 in the program account after execution of the contract specified in subdivision (a). The Department of Finance may accelerate the deposit of the funds when necessary to meet cash-flow requirements.

(j) The state shall be at risk for any amount over and above the amounts deposited in the reserve account. As a condition of the state assuming this risk, the department may require uniform eligibility criteria and benefits to be provided which shall be mutually established by participating counties in conjunction with the department. The department in consultation with the counties may revise these eligibility criteria and benefits or alter rates of payment during the fiscal year in order to assure that sufficient funds are available for health services to county residents certified as eligible for the services. The counties and the department shall work collectively to ensure that expenditures do not exceed the funds available in the program account and may adjust eligibility and benefit criteria and payments accordingly.

(k) The Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Contracts under this section shall be exempt from the provisions of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. Contracts shall have no force and effect unless approved by the Department of Finance.

(*l*) The state shall not incur any liability except as specified in this section.

(m) Under the program provided for in this section, the

department shall reimburse hospitals for inpatient services at the rates negotiated for the Medi-Cal program by the California Medical Assistance Commission, pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3, if both of the following circumstances exist:

(1) The hospital has a contract with the state for these rates of reimbursement.

(2) The California Medical Assistance Commission determines that reimbursement to the hospital at the contracted rate will not have a detrimental fiscal impact on either the Medi-Cal program or the program provided for in this section. In negotiating and renegotiating contracts with hospitals, the commission may seek terms which allow reimbursement for patients receiving services under this section at contracted Medi-Cal rates.

Any hospital which has a contract with the state for inpatient services under the Medi-Cal program and which has been approved by the commission to be reimbursed for patients receiving services under this section shall not deny services to these patients.

SEC. 2. Section 16709 of the Welfare and Institutions Code, as added by Section 1.5 of Chapter 588 of the Statutes of 1984, is repealed.

SEC. 3. The Legislature finds and declares that counties are utilizing general purpose revenue in greater proportions in order to meet the matching requirements of federal- and state-mandated programs. These requirements ignore the impact of high unemployment and other extenuating factors which cause the growth in the county matching funds requirement to far exceed its growth, if any, in general purpose revenues. Counties have been forced to use discretionary funds to meet the matching requirements and, therefore, have had to make undesirable spending reductions in essential services like law enforcement, fire protection, streets and roads maintenance programs, and personnel costs not related to the mandated programs.

Further, it is the intent of the Legislature that the one-time appropriation contained in Section 4 of this act recognizes and is consistent with the fiscal and programmatic relationships and responsibilities between the state and counties as they involve funding and program delivery of partnership programs.

CHAPTER 1127

An act to amend Sections 13009 and 13009.1 of the Health and Safety Code, relating to fires.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 13009 of the Health and Safety Code is amended to read:

13009. (a) Any person (1) who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him or her to escape onto any public or private property, (2) other than a mortgagee, who, being in actual possession of a structure, fails or refuses to correct, within the time allotted for correction, despite having the right to do so, a fire hazard prohibited by law, for which a public agency properly has issued a notice of violation respecting the hazard, or (3) including a mortgagee, who, having an obligation under other provisions of law to correct a fire hazard prohibited by law, for which a public agency has properly issued a notice of violation respecting the hazard, fails or refuses to correct the hazard within the time allotted for correction, despite having the right to do so, is liable for the fire suppression costs incurred in fighting the fire and for the cost of providing rescue or emergency medical services, and those costs shall be a charge against that person. The charge shall constitute a debt of that person, and is collectible by the person, or by the federal, state, county, public, or private agency, incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

(b) Any costs incurred by the Department of Forestry in suppressing any wildland fire originating or spreading from a prescribed burning operation conducted by the department pursuant to a contract entered into pursuant to Article 2 (commencing with Section 4475) of Chapter 7 of Part 2 of Division 4 of the Public Resources Code shall not be collectible from any party to the contract, including any private consultant or contractor who entered into an agreement with that party pursuant to subdivision (d) of Section 4475.5 of the Public Resources Code, as provided in subdivision (a), to the extent that those costs were not incurred as a result of a violation of any provision of the contract.

(c) This section applies in all areas of the state, regardless of whether primarily wildlands, sparsely developed, or urban.

SEC. 2. Section 13009.1 of the Health and Safety Code is amended to read:

13009.1. (a) Any person (1) who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him or her to escape onto any public or private property,

(2) other than a mortgagee, who, being in actual possession of a structure, fails or refuses to correct, within the time allotted for correction, despite having the right to do so, a fire hazard prohibited by law, for which a public agency properly has issued a notice of violation respecting the hazard, or (3) including a mortgagee, who, having an obligation under other provisions of law to correct a fire hazard prohibited by law, for which a public agency properly has issued a notice of violation respecting the hazard, fails or refuses to correct the hazard within the time allotted for correction, despite having the right to do so, is liable for both of the following:

(1) The cost of investigating and making any reports with respect to the fire.

(2) The costs relating to accounting for that fire and the collection of any funds pursuant to Section 13009, including, but not limited to, the administrative costs of operating a fire suppression cost recovery program. The liability imposed pursuant to this paragraph is limited to the actual amount expended which is attributable to the fire.

(b) In any civil action brought for the recovery of costs provided in this section, the court in its discretion may impose the amount of liability for costs described in subdivision (a).

(c) The burden of proof as to liability shall be on the plaintiff and shall be by a preponderance of the evidence in an action alleging that the defendant is liable for costs pursuant to this section. The burden of proof as to the amount of costs recoverable shall be on the plaintiff and shall be by a preponderance of the evidence in any action brought pursuant to this section.

(d) Any testimony, admission, or any other statement made by the defendant in any proceeding brought pursuant to this section, or any evidence derived from the testimony, admission or other statement, shall not be admitted or otherwise used in any criminal proceeding arising out of the same conduct.

(e) The liability constitutes a debt of that person and is collectible by the person, or by the federal, state, county, public, or private agency, incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

(f) This section applies in all areas of the state, regardless of whether primarily wildlands, sparsely developed, or urban.

CHAPTER 1128

An act to add Chapter 7.9 (commencing with Section 4049.50) to Part 1 of Division 5 of the Health and Safety Code, relating to water supply.

[Approved by Governor September 24, 1987 Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Chapter 7.9 (commencing with Section 4049.50) is added to Part 1 of Division 5 of the Health and Safety Code, to read:

CHAPTER 7.9. CONTROL OF CROSS-CONNECTIONS BY WATER USERS

4049.50. Local health officers may maintain programs for the control of cross-connections by water users, within the users' premises, where public exposure to drinking water contaminated by backflow may occur. The programs may include inspections within water users premises for the purpose of identifying cross-connection hazards and determining appropriate backflow protection. Water users shall comply with all orders, instructions, regulations, and notices from the local health officer with respect to the installation, testing, and maintenance of backflow prevention devices. The local health officer may collect fees from those water users required to install backflow prevention devices to offset the costs of implementing cross-connection control programs.

4049.51. Local health officers may maintain programs, in cooperation with water suppliers, to protect against backflow through service connections into the public water supply, and may collect fees from those water users required to install backflow prevention devices to offset the costs of implementing these programs. The fees authorized under this section and under Section 4049.50 shall be limited to the costs of administering these programs. These programs shall be conducted in accordance with backflow protection regulations adopted by the State Department of Health Services.

CHAPTER 1129

An act to amend Sections 21152, 22791, 22792, 22793, 22813, 22825.1, 22832, 22841, and 22842 of, and to add Sections 22790.4, 22840.2, and 22840.3 to, the Government Code, relating to public employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 21152 of the Government Code is amended to read:

21152. A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided under this system upon approval of the State Board of Control or the governing body of a contracting agency, as the case may be, under employment by any state or contracting agency in which he or she previously served while a member of this system, where by reason of actual litigation, or a proceeding before the State Board of Control or the governing body of a contracting agency, as the case may be, or where the state or contracting agency desires to perpetuate testimony in connection with any anticipated litigation involving the state or the state or contracting agency, and adverse interests, the services of the person are or may be necessary in preparing for trial or in testifying as to matters within or based upon his or her knowledge acquired while employed. He or she may be paid a per diem and actual and necessary traveling expenses, but he or she shall not be paid at a greater rate of compensation per diem than the rate ordinarily paid other persons by state agencies or the contracting agency for similar services. However, there shall be deducted from the per diem compensation sums equal to the retirement annuity allocable to the days of actual employment hereunder.

SEC. 2. Section 22790.4 is added to the Government Code, to read:

22790.4. In addition to the powers conferred on the board by Section 22790, the board may administer self-funded or minimum premium health benefits plans.

SEC. 3. Section 22791 of the Government Code is amended to read:

22791. The basic health benefit plans which may be approved by the board may include the following types:

(a) One or more statewide service benefit plans under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services rendered to employees or annuitants or family members, or under which, under certain conditions, payment is made by a carrier to the employee or

annuitant or family member.

(b) One or more statewide indemnity benefit plans under which a carrier agrees to pay certain sums of money, not in excess of actual expenses incurred, for health services.

(c) Comprehensive group-practice prepayment plans which offer benefits, in whole or in substantial part, on a prepaid basis, with professional services thereunder provided by physicians practicing as a group in a common center or centers. A group shall include physicians representing at least three major medical specialities who receive all or a substantial part of their professional income from the prepaid funds.

(d) Individual practice prepayment plans which offer health services in whole or in part on a prepaid basis, with professional services thereunder provided by individual physicians who agree, under such conditions as may be prescribed by the board, to accept the payments provided by the plans as full payment for covered services rendered by them.

(e) Employee cost containment and cost reduction incentive programs which involve the employee, the annuitant, and family members, as active participants, along with the plan carrier and the plan provider, in a joint effort toward containing and reducing the cost of providing medical and hospital health care services to public employees. In developing these plans the board, in cooperation with the Department of Personnel Administration, may request proposals from carriers and certified public employee representatives.

(f) One or more self-funded or minimum premium plans.

The board shall report to the Legislature annually, on November 1, relative to the success or failure of any approved plans.

Irrespective of any other provision of law, the sponsors of a plan approved under this section may reinsure the operation of the plan with an admitted insurer authorized to write disability insurance, provided that the premium for the insurance shall include the entire prepayment fee.

SEC. 4. Section 22792 of the Government Code is amended to read:

22792. The board may, without compliance with any provisions of law relating to competitive bidding, enter into contracts with carriers offering health benefit plans or with entities offering services relating to the administration of health benefits plans. Every such contract shall be for a uniform term of at least one year, but may be made automatically renewable from term to term in the absence of notice of termination by either party.

Commencing in the year 1976 the contract term for contracts entered into or approved by the board shall be for such period as will result in expiration of the contract terms on July 31. However, the board may extend a contract for a period not exceeding six months, subject to existing terms and conditions or any new terms and conditions which are agreed upon.

SEC. 5. Section 22793 of the Government Code is amended to

read:

22793. Each contract shall contain a detailed statement of benefits offered and shall include such maximums, limitations, exclusions, and other definitions of benefits as the board may deem necessary or desirable.

No contract shall be made or plan approved which excludes any person on account of that person's physical condition, age, race, or other status at the time of original group enrollment. Transfer of enrollment in any plan shall be open to all employees and annuitants in accordance with the provisions of Section 22813 of this code.

No contract shall be made or plan approved which does not offer to each annuitant whose enrollment in the plan is terminated other than by cancellation of enrollment, or each employee whose enrollment in the plan is terminated other than by cancellation of enrollment, voluntary separation from state service, or dismissal from state service for cause, the option to convert, without evidence of good health and within the time limits which are prescribed by the carrier and approved by the board, to a nongroup contract providing health benefits. An employee or annuitant who exercises this option shall pay the full periodic charges of the nongroup contract, on the terms or conditions which are prescribed by the carrier and approved by the board.

No contract shall be made or plan approved which does not provide for grievance procedures to protect the rights of employees and annuitants.

SEC. 6. Section 22813 of the Government Code is amended to read:

22813. A transfer of enrollment from one health benefits plan to another such plan may be made by an employee or annuitant at such times and under such conditions as may be prescribed by regulations of the board. In the case of a health benefits plan in which services are provided by a limited panel of physicians associated with the plan, it is recognized that it may be impossible or impractical to maintain acceptable physician-patient relationships with particular employees or annuitants or members of their families. In any such case the plan may submit the question of ability to maintain adequate physician-patient relationships for consideration under the grievance procedure provided pursuant to Section 22793, and in the event such grievance procedure shall result in a determination that such relationship cannot reasonably be maintained, then the employee or annuitant shall be entitled to change his or her enrollment to any other available health benefits plan without regard to his or her physical condition, age, race, or other status.

SEC. 7. Section 22825.1 of the Government Code is amended to read:

22825.1. (a) Notwithstanding any other provision of this article, the employer's contribution, with respect to each state officer and employee or an annuitant who was in such employment or office including an academic position with a campus of the California State

University or is a survivor of such person, shall be adjusted by the Legislature in the annual Budget Act. Annual adjustments of the dollar amounts therein shall be based upon the principle that the employer's contribution for each employee or annuitant shall be an amount equal to 100 percent of the weighted average of the health benefits plan premiums for employees or annuitants enrolled for self alone plus 90 percent of the weighted average of the additional premiums required for enrollment of family members in the four health benefits plans which have the largest number of enrollments during the fiscal year to which the formula applied. Notwithstanding any other provision of law, any plan which is offered exclusively as part of any flexible benefits program shall not be included in the formula. There shall be only one such contribution with respect to all annuitants receiving allowances as survivors of the same employee or annuitant.

The employer's contribution under this section for each employee shall commence on the effective date of his or her enrollment.

The contribution of each employee and annuitant shall be the total cost per month of the benefit coverage afforded him or her under the plan or plans less the portion thereof to be contributed by the employer.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 or 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 those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 8. Section 22832 of the Government Code is amended to read:

22832. The contributions required of a contracting agency, along with contributions withheld from salaries of its employees, shall be forwarded monthly, no later than the 10th day of the month for which the contribution is due, and shall be deposited in the Public Employees' Health Care Fund and credited to either the Public Employees' Health Care Fund or the Public Employees' Contingency Reserve Fund in the proportions specified by Section 22826. The county superintendent of schools shall draw requisitions against the county school service fund and the funds of the respective school districts for amounts equal to the total of the employers' contributions required to be paid from the county school service fund and from the funds of the districts, and the contributions deducted from the compensation of employees paid from the funds. The amounts shall be deposited in the county treasury to the credit of the contract retirement fund established under Section 20585.

The county superintendent thereafter shall draw his or her requisitions against the fund in favor of the board which when allowed by the county auditor shall constitute warrants against the

funds and shall forward the warrants to the board in accordance with this section.

SEC. 9. Section 22840.2 is added to the Government Code, to read:

22840.2. (a) There is in the State Treasury a Public Employees' Health Care Fund, the purpose of which is to fund the health benefits plan or plans administered or approved by the board pursuant to the authority conferred on the board by this part. The board shall have the exclusive control of the administration and investment of the Public Employees' Health Care Fund.

(b) The Public Employees' Health Care Fund shall consist of the following:

(1) Any self-funded or minimum premium plan premiums paid by public agencies, the state and enrolled employees, annuitants, and family members, including premiums paid directly for continuation coverage authorized under the Consolidated Omnibus Budget and Reconciliation Act of 1986 or as thereafter amended, and as authorized by this part.

(2) Any other health plan premiums paid by public agencies.

(3) Any reserve moneys from terminated plans designated by the board for payment to self-funded or minimum premium plans.

(c) The board may invest funds in the Public Employees' Health Care Fund pursuant to the law governing its investment of the retirement fund. The board may authorize its investment staff or may contract with independent investment professionals to manage the investments of this fund.

(d) Income, of whatever nature, earned on the Public Employees' Health Care Fund during any fiscal year, shall be credited to the fund.

(e) The Public Employees' Health Care Fund is continuously appropriated, without regard to fiscal years, to pay benefits and claims costs, to pay the costs of administering self-funded or minimum premium plans, to refund those who made direct premium payments, and to pay such other costs as the board may determine as necessary, consistent with its fiduciary duty.

(f) The Legislature finds and declares that the Public Employees' Health Care Fund is a trust fund held for the exclusive benefit of enrolled employees, annuitants, and family members and the health plan carriers, insurers, and those contracting to provide medical and hospital care services.

SEC. 10. Section 22840.3 is added to the Government Code, to read:

22840.3. (a) The board shall submit a written report to the Senate Public Employment and Retirement Committee and the Assembly Public Employees' Retirement and Social Security Committee on the content of the current fee-for-service consolidation request for proposals and shall receive any comments of those committees. If the board decides to release any additional requests for proposals regarding consolidation or self-funding, the

board shall submit copies thereof to those committees at least 30 days prior to the release.

(b) The board shall, within 60 days after the selection of an administrator pursuant to Section 22792, submit to the committees specified in subdivision (a) a schedule for the implementation of the consolidation of fee-for-service plans and the proposed design of the evaluation of the consolidation required by subdivision (c).

(c) Within 18 months after the implementation of the consolidation of fee-for-service plans, and each year thereafter, the board shall submit to the committees specified in subdivision (a) an evaluation of the consolidation plan. The report shall include, but not be limited to: the costs to the board and to participants; the degree of satisfaction of members and annuitants with the consolidated plan and with the quality of the care provided thereby, as determined by a representative sampling of participants; and the level of accessibility to preferred providers for rural members who do not have access to health maintenance organizations.

(d) Within 18 months of the implementation of the consolidation of fee-for-service plans, the board shall submit to the committees specified in subdivision (a), the schedule and process for the consolidation of the health maintenance organizations. The report shall include the design for the evaluation of the consolidation of the health maintenance organizations.

SEC. 11. Section 22841 of the Government Code is amended to read:

22841. Contributions of employees and annuitants, and contributions of the state not credited to the Public Employees' Contingency Reserve Fund, shall be utilized to pay the premiums or other charges to carriers or to the Public Employees' Health Care Fund. The Controller shall suitably identify and remit the state's contribution for each employee or annuitant monthly to the Public Employees' Health Care Fund or to the insurer or insurers of, or others contracting to provide or arrange medical and hospital service under the plans, together with amounts authorized by the employees and annuitants covered under the plans to be deducted from their salaries or retirement allowances for payment of their share of the cost of the plan.

SEC. 12. Section 22842 of the Government Code is amended to read:

22842. Contributions of employees and annuitants of contracting agencies, and contributions of the employers not credited to the Public Employees' Health Care Fund or to the Public Employees' Contingency Reserve Fund for purposes specified in Section 22826, shall be utilized for payment of premiums and other charges required to be paid to carriers, and those funds are continuously appropriated for that purpose to the extent of those contributions. Those amounts shall be suitably identified and remitted monthly to the carriers by warrant of the Controller upon claims filed by the board.

SEC. 13. It is the intent of the Legislature that the Board of Administration of the Public Employee's Retirement System shall not implement a plan pursuant to this act that would consolidate the fee-for-service plans under the Public Employees' Medical and Hospital Care Act into one self-funded program, until after the Assembly Committee on Public Employees, Retirement, and Social Security, either separately or in conjunction with the Senate Committee on Public Employment and Retirement, holds a committee hearing on the subject of consolidating, which hearing would include a review of the need for consolidation, the pros and cons of consolidating, and possible alternatives, if any, to consolidating the fee-for-service plans.

SEC. 14. 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 single statewide health benefits service plan, whose premiums are an integral element of the statutory weighted average formula for determining the amount of the state's contribution for health benefits coverage, has been terminated effective July 31, 1987. In order that the statutory formula may be revised at the earliest possible time to reflect that termination, it is necessary that this act take effect immediately.

CHAPTER 1130

An act to add and repeal Article 6.8 (commencing with Section 408) of Chapter 2 of Division 1 of the Health and Safety Code, relating to health, and making an appropriation therefor.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Article 6.8 (commencing with Section 408) is added to Chapter 2 of Division 1 of the Health and Safety Code, to read:

Article 6.8. Task Force on Spinal Cord Injuries

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

(a) There are approximately 35,000 spinal cord injured persons residing in this state.

(b) The state expends approximately three hundred forty million dollars ($340,000,000) annually to support 17,000 quadraplegics.

(c) If cures are found for spinal cord injuries the incidence of quadraplegia will be greatly reduced.

(d) Cures for spinal cord injuries are on the threshold of being

discovered.

(e) A task force to explore the need for research in this area could be of immense value in the effort to find these cures at the earliest possible time.

408.1. (a) There is hereby created in the State Department of Health Services an advisory board entitled the Task Force on Spinal Cord Injuries, to be composed of 9 members. The task force shall be composed as follows:

(1) The Senate Committee on Rules shall appoint two members, one of whom shall be a Senator.

(2) The Speaker of the Assembly shall appoint two members, one of whom shall be an Assembly Member.

(3) The Governor shall appoint two representatives of the scientific community who are presently involved in central nervous system (CNS) research.

(4) The Governor shall appoint two representatives from organizations within the state which are composed of spinal cord injured members.

(5) The Governor shall appoint one member to represent the University of California.

(b) For the purposes of this article the Members of the Legislature serving as members of the task force shall be considered a joint committee of the two houses of the Legislature constituted and acting as an investigating committee, and as such shall have the powers and duties imposed on such committees by the Joint Rules of the Senate and Assembly. A Member of the Legislature serving on the task force may appoint a designee to attend meetings of the task force on his or her behalf.

(c) Members of the task force shall receive per diem in the amount of one hundred dollars ($100) while engaging in task force business, and shall be reimbursed for their actual and necessary travel expenses incurred in attending task force meetings.

408.2. The task force shall explore the need for additional research in the area of spinal cord injury.

408.4. This article shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute which is chaptered prior to January 1, 1993, deletes or extends that date.

SEC. 2. There is hereby reappropriated to the State Department of Health Services, from funds appropriated to the department pursuant to Provision (12) of Item 4260-001-001 of the Budget Act of 1987 (Chapter 135 of the Statutes of 1987), the sum of fifty thousand dollars ($50,000) to be expended for the administrative expenses of the Task Force on Spinal Cord Injuries, created by Article 6.8 (commencing with Section 408) of Chapter 2 of Division 1 of the Health and Safety Code, as contained in Section 1 of this act.

CHAPTER 1131

An act to amend Section 8690.6 of the Government Code, relating to emergencies, and making an appropriation therefor.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987]

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

SECTION 1. Section 8690.6 of the Government Code is amended to read:

8690.6. (a) There is hereby established in the Reserve for Economic Uncertainties a Disaster Response-Emergency Operations Account. Notwithstanding Section 13340, moneys in the account are continuously appropriated, without regard to fiscal year, for both of the following:

(1) For allocation by the Director of the Office of Emergency Services, upon an order of the Governor and approval by the Director of Finance, for reimbursement of extraordinary emergency or disaster response operation costs incurred by state-requested local agencies as a result of a state of emergency proclamation by the Governor.

(2) For allocation by the Director of Finance for the reimbursement of extraordinary emergency or disaster response operation costs incurred by state agencies as a result of a state of emergency proclamation by the Governor.

(b) The funds shall be allocated subject to the conditions of this section and in accordance with Section 27.00 of the annual Budget Act, except that the allocations may be made 30 days or less after the notification of the Legislature pursuant to subdivision (b) of that section.

(c) Funds allocated to state and local agencies pursuant to the requirements of this section may be used to provide reimbursement to state and local agencies for extraordinary costs incurred for emergency or disaster response operations resulting from a state of emergency proclamation by the Governor. No funds allocated under this section shall be used to supplant federal funds otherwise available in the absence of state financial relief. The Office of Emergency Services shall establish standards and instructions for the receipt and processing of state and local agency claims. Notwithstanding the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, these standards shall not be subject to the review and approval of the Office of Administrative Law. All funds provided pursuant to this section shall be subject to audit by the Controller.

(d) The amount of financial assistance provided to an individual, business, or governmental entity under this section, or pursuant to any other program of state-funded disaster assistance, shall be

deducted from sums received in payment of damage claims asserted against the state, its agents, or employees, for causing or contributing to the effects of the proclaimed disaster.

(e) This section shall become inoperative on June 30, 1993, and, as of January 1, 1994, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1994, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 8690.6 of the Government Code is amended to read:

8690.6. (a) There is hereby established in the Reserve for Economic Uncertainties a Disaster Response-Emergency Operations Account. Notwithstanding Section 13340, moneys in the account are continuously appropriated, without regard to fiscal years, for both of the following:

(1) For allocation by the Director of the Office of Emergency Services, upon an order of the Governor and approval by the Director of Finance, for reimbursement of extraordinary emergency or disaster response operation costs incurred by state-requested local agencies as a result of a state of emergency proclamation by the Governor.

(2) For allocation by the Director of Finance for the reimbursement of extraordinary emergency or disaster response operation costs incurred by state agencies as a result of a state of emergency proclamation by the Governor.

(b) The funds shall be allocated subject to the conditions of this section and in accordance with Section 27.00 of the annual Budget Act, except that the allocations may be made 30 days or less after notification of the Legislature pursuant to subdivision (b) of that section.

(c) Funds allocated to state and local agencies pursuant to the requirements of this section may be used to provide reimbursement to state and local agencies for extraordinary costs incurred for emergency or disaster response operations resulting from a state of emergency proclamation by the Governor. No funds allocated under this section shall be used to supplant federal funds otherwise available in the absence of state financial relief. The Office of Emergency Services shall establish standards and instructions for the receipt and processing of state and local agency claims. Notwithstanding the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, these standards shall not be subject to the review and approval of the Office of Administrative Law. All funds provided pursuant to this section shall be subject to audit by the Controller.

(d) The amount of financial assistance provided to an individual, business, or governmental entity under this section, or pursuant to any other program of state-funded disaster assistance, shall be deducted from sums received in payment of damage claims asserted against the state, its agents, or employees, for causing or contributing to the effects of the proclaimed disaster.

(e) The Legislature finds and declares that the amendments made to subdivision (c) of this section by Chapter 16 of the Statutes of 1986 declare the intent of the Legislature at the time when this section was originally added to this code by Chapter 1562 of the Statutes of 1985.

(f) This section shall become inoperative on June 30, 1993, and, as of January 1, 1994, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1994, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 2 of this bill incorporates amendments to Section 8690.6 of the Government Code proposed by both this bill and SB 1568. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 8690.6 of the Government Code, and (3) this bill is enacted after SB 1568, in which case Section 1 of this bill shall not become operative.

CHAPTER 1132

An act to amend Section 593a of the Penal Code, and to amend Section 6008 of the Public Resources Code, relating to resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 593a of the Penal Code is amended to read:

593a. (a) Every person who maliciously drives or places, in any tree, saw-log, shingle-bolt, or other wood, any iron, steel, ceramic, or other substance sufficiently hard to injure saws, knowing that the tree is intended to be harvested or that the saw-log, shingle-bolt, or other wood is intended to be manufactured into any kind of lumber or other wood product, is guilty of a felony.

(b) Any person who violates subdivision (a) and causes bodily injury to another person other than an accomplice shall, in addition and consecutive to the punishment prescribed for that felony, be punished by an additional prison term of three years.

SEC. 2. Section 6008 of the Public Resources Code is amended to read:

6008. In order to protect the public's access to, and use of, all state-owned lands in Humboldt Bay, no right to the use of any state lands, including, but not limited to, tide and submerged lands, in and adjacent to Humboldt Bay south of the entrance to the bay shall be sold.

This section shall not be applicable to settlements of title or boundary problems by the commission or to exchanges in connection therewith.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. Section 1 of this bill shall become operative only if Assembly Bill 952 of the 1987–88 Regular Session is chaptered and shall become operative on the date that this bill is chaptered or the date that Assembly Bill 952 is chaptered, whichever is later.

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 clarify the fact that Section 593a of the Penal Code makes "tree spiking" a felony, in order to add an additional prison term when that criminal act causes bodily injury, and in order to allow the Humboldt Bay Harbor, Recreation, and Conservation District to lease land at the earliest possible date, it is necessary that this act take effect immediately.

CHAPTER 1133

An act to amend Sections 221, 22669, and 22851.3 of, and to add Section 9564 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 221 of the Vehicle Code is amended to read:

221. (a) The term "automobile dismantler" does not include any of the following:

(1) The owner of any premises on which two or more unregistered and inoperable vehicles are held or stored, if the vehicles are used, or intended to be used, for restoration or as replacement parts or otherwise in conjunction with any business of a licensed dealer, manufacturer, or transporter, or in conjunction with the operation and maintenance of any fleet of motor vehicles used for the transportation of persons or property.

(2) The owner of any premises or property used in conjunction with any agricultural, farming, mining, ranching, or motor vehicle repair business.

(3) Any person engaged in the restoration of vehicles of the type described in Section 5004 or in the restoration of other vehicles having historic or classic significance.

(4) The owner of a steel mill, scrap metal processing facility, or

similar establishment purchasing vehicles of a type subject to registration, not for the purpose of selling the vehicles, in whole or in part, but exclusively for the purpose of reducing the vehicles to their component materials, if either the facility obtains, on a form approved or provided by the department, a certification by the person from whom the vehicles are obtained that each of the vehicles has been cleared for dismantling pursuant to Section 5500 or 11520, or the facility complies with Section 9564.

(5) Any person who acquires used parts or components for resale from vehicles which have been previously cleared for dismantling pursuant to Section 5500 or 11520.

Nothing in this paragraph permits a dismantler to acquire or sell used parts or components during the time the dismantler license is under suspension.

(b) Any vehicle acquired for the purpose specified in paragraph (4) of subdivision (a) from other than a licensed dismantler, or from other than an independent hauler who obtained the vehicle, or parts thereof from a licensed dismantler, shall be accompanied by either a receipt issued by the department evidencing proof of clearance for dismantling under Section 5500, or a copy of the ordinance or order issued by a local authority for the abatement of the vehicle pursuant to Section 22660. The steel mill, scrap metal processing facility, or similar establishment acquiring the vehicle shall attach the form evidencing clearance or abatement to the certification required pursuant to this section.

All forms specified in paragraph (4) of subdivision (a) and in this subdivision shall be available for inspection by a peace officer during business hours.

SEC. 2. Section 221 of the Vehicle Code is amended to read:

221. (a) The term "automobile dismantler" does not include any of the following:

(1) The owner of any premises on which two or more unregistered and inoperable vehicles are held or stored, if the vehicles are used, or intended to be used, for restoration or as replacement parts or otherwise in conjunction with any business of a licensed dealer, manufacturer, or transporter, or in conjunction with the operation and maintenance of any fleet of motor vehicles used for the transportation of persons or property.

(2) The owner of any premises or property used in conjunction with any agricultural, farming, mining, ranching, or motor vehicle repair business.

(3) Any person engaged in the restoration of vehicles of the type described in Section 5004 or in the restoration of other vehicles having historic or classic significance.

(4) The owner of a steel mill, scrap metal processing facility, or similar establishment purchasing vehicles of a type subject to registration, not for the purpose of selling the vehicles, in whole or in part, but exclusively for the purpose of reducing the vehicles to their component materials, if either the facility obtains, on a form

approved or provided by the department, a certification by the person from whom the vehicles are obtained that each of the vehicles has, except as provided in Section 9564, been cleared for dismantling pursuant to Section 5500 or 11520 or the facility complies with Section 9564.

(5) Any person who acquires used parts or components for resale from vehicles which have been previously cleared for dismantling pursuant to Section 5500 or 11520.

Nothing in this paragraph permits a dismantler to acquire or sell used parts or components during the time the dismantler license is under suspension.

(b) Any vehicle acquired for the purpose specified in paragraph (4) of subdivision (a) from other than a licensed dismantler, or from other than an independent hauler who obtained the vehicle, or parts thereof from a licensed dismantler, shall be accompanied by either a receipt issued by the department evidencing proof of clearance for dismantling under Section 5500, or a copy of the ordinance or order issued by a local authority for the abatement of the vehicle pursuant to Section 22660. The steel mill, scrap metal processing facility, or similar establishment acquiring the vehicle shall attach the form evidencing clearance or abatement to the certification required pursuant to this section.

All forms specified in paragraph (4) of subdivision (a) and in this subdivision shall be available for inspection by a peace officer during business hours.

SEC. 3. Section 9564 is added to the Vehicle Code, to read:

9564. (a) A scrap metal processor, as described in paragraph (4) of subdivision (a) of Section 221, who acquires a vehicle of a type subject to registration under this code, and who complies with all the provisions of this section, is not required to submit a certificate of nonoperation in lieu of fees or to pay fees that would otherwise be required if the vehicle were to be currently registered.

(b) A scrap metal processor who acquires a vehicle as provided in subdivision (a) shall submit either of the following to the department before reducing the vehicle to its component materials:

(1) Documentation that the vehicle was acquired pursuant to Section 22669 and disposed of in compliance with Article 2 (commencing with Section 22850) of Chapter 10 of Division 11.

(2) The properly endorsed certificate of title transferring title to the scrap iron processor and any available license plates or registration documents.

(c) A vehicle delivered to a scrap metal processor under subdivision (a) shall not be reconstructed or made operable, unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates pursuant to Section 5004, in which case the vehicle may be reconstructed or made operable.

SEC. 4. Section 22669 of the Vehicle Code is amended to read:

22669. (a) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal

Code, or any other employee of the state, county, or city designated by an agency or department of the state or the board of supervisors or city council to perform this function, in the territorial limits in which the officer or employee is authorized to act, who has reasonable grounds to believe that the vehicle has been abandoned, as determined pursuant to Section 22523, may remove the vehicle from a highway or from public or private property.

(b) Any person performing a franchise or contract awarded pursuant to subdivision (a) of Section 22710, may remove a vehicle from a highway or place to which it has been removed pursuant to subdivision (c) of Section 22654 or from public or private property, after a determination by a peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or other designated employee of the state, county, or city in which the vehicle is located that the vehicle is abandoned, as determined pursuant to Section 22523.

(c) A state, county, or city employee, other than a peace officer or employee of a sheriff's department or a city police department, designated to remove vehicles pursuant to this section may do so only after he or she has mailed or personally delivered a written report identifying the vehicle and its location to the office of the Department of the California Highway Patrol located nearest to the vehicle.

(d) Motor vehicles which are parked, resting, or otherwise immobilized on any highway or public right-of-way and which lack an engine, transmission, wheels, tires, doors, windshield, or any other part or equipment necessary to operate safely on the highways of this state, are hereby declared a hazard to public health, safety, and welfare and may be removed immediately upon discovery by a peace officer or other designated employee of the state, county, or city.

SEC. 5. Section 22851.3 of the Vehicle Code is amended to read:

22851.3. Whenever a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any other employee of a public agency authorized pursuant to Section 22669, removes, or causes the removal of, a vehicle pursuant to Section 22669 and the public agency or, at the request of the public agency, the lienholder determines the estimated value of the vehicle is one hundred dollars ($100) or less, the public agency which removed, or caused the removal of, the vehicle shall cause the disposal of the vehicle under this section, subject to all of the following requirements:

(a) Not less than 72 hours before the vehicle is removed, the peace officer or the authorized public employee has securely attached to the vehicle a distinctive notice which states that the vehicle will be removed by the public agency. This subdivision does not apply to abandoned vehicles removed pursuant to subdivision (d) of Section 22669 which are determined by the public agency to have an estimated value of one hundred dollars ($100) or less.

(b) Immediately after removal of the vehicle, the public agency which removed, or caused the removal of, the vehicle shall notify the Stolen Vehicle System of the Department of Justice in Sacramento of the removal.

(c) The public agency which removed, or caused the removal of, the vehicle or, at the request of the public agency, the lienholder shall obtain a copy of the names and addresses of all persons having an interest in the vehicle, if any, from the Department of Motor Vehicles either directly or by use of the California Law Enforcement Telecommunications System. This subdivision does not require the public agency or lienholder to obtain a copy of the actual record on file at the Department of Motor Vehicles.

(d) Within 48 hours of the removal, excluding weekends and holidays, the public agency which removed, or caused the removal of, the vehicle or, at the request of the public agency, the lienholder shall send a notice to the registered and legal owners at their addresses of record with the Department of Motor Vehicles, and to any other person known to have an interest in the vehicle. A notice sent by the public agency shall be sent by certified or first-class mail, and a notice sent by the lienholder shall be sent by certified mail. The notice shall include all of the following information:

(1) The name, address, and telephone number of the public agency providing the notice.

(2) The location of the place of storage and description of the vehicle which shall include, if available, the vehicle make, license plate number, vehicle identification number, and mileage.

(3) The authority and purpose for the removal of the vehicle.

(4) A statement that the vehicle will be disposed of 15 days from the date of the notice.

(5) A statement that the owners and interested persons, or their agents, have the opportunity for a poststorage hearing before the public agency which removed, or caused the removal of, the vehicle to determine the validity of the storage if a request for a hearing is made in person, in writing, or by telephone within 10 days from the date of notice; that, if the owner or interested person, or his or her agent, disagrees with the decision of the public agency, the decision may be reviewed pursuant to Section 11523 of the Government Code; and that during the time of the initial hearing, or during the time the decision is being reviewed pursuant to Section 11523 of the Government Code, the vehicle in question shall not be disposed of.

(e) (1) Any requested hearings shall be conducted within 48 hours of the request, excluding weekends and holidays. The public agency which removed the vehicle may authorize its own officers to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle.

(2) Failure of either the registered or legal owner or interested person, or his or her agent, to request or to attend a scheduled hearing shall satisfy the poststorage validity hearing requirement of this section.

(f) The public agency employing the person, or utilizing the services of a contractor or franchiser pursuant to subdivision (b) of Section 22669, which removed, or caused the removal of, the vehicle and which directed any towing or storage, shall be responsible for the costs incurred for towing and storage if it is determined in the hearing that reasonable grounds to believe that the vehicle was abandoned are not established.

(g) No authorization for disposal may be issued by the public agency which removed, or caused the removal of, the vehicle to a lienholder who is storing the vehicle prior to the conclusion of a requested poststorage hearing or any judicial review of that hearing.

(h) If, after 15 days from the notification date, the vehicle remains unclaimed and the towing and storage fees have not been paid, and if no request for a poststorage hearing was requested or a poststorage hearing was not attended, the public agency which removed, or caused the removal of, the vehicle shall provide to the lienholder who is storing the vehicle, on a form approved by the Department of Motor Vehicles, authorization to dispose of the vehicle. The lienholder may request the public agency to provide the authorization to dispose of the vehicle.

(i) If the vehicle is claimed by the owner or his or her agent within 15 days of the notice date, the lienholder who is storing the vehicle may collect reasonable fees for services rendered, but may not collect lien sale fees as provided in Section 22851.12.

(j) Disposal of the vehicle by the lienholder who is storing the vehicle may only be to a licensed dismantler or scrap iron processor. A copy of the public agency's authorization for disposal shall be forwarded to the licensed dismantler within five days of disposal to a licensed dismantler. A copy of the public agency's authorization for disposal shall be retained by the lienholder who stored the vehicle for a period of 90 days if the vehicle is disposed of to a scrap iron processor.

(k) If the names and addresses of the registered and legal owners of the vehicle are not available from the records of the Department of Motor Vehicles, either directly or by use of the California Law Enforcement Telecommunications System, the public agency may issue to the lienholder who stored the vehicle an authorization for disposal at any time after the removal.

The lienholder may request the public agency to issue an authorization for disposal after the lienholder ascertains that the names and addresses of the registered and legal owners of the vehicle are not available from the records of the Department of Motor Vehicles either directly or by use of the California Law Enforcement Telecommunications System.

SEC. 5. Section 22851.3 of the Vehicle Code is amended to read:

22851.3. Whenever a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any other employee of a public agency authorized pursuant to Section 22669, removes, or causes the removal of, a vehicle pursuant

to Section 22669 and the public agency or, at the request of the public agency, the lienholder determines the estimated value of the vehicle is three hundred dollars ($300) or less, the public agency which removed, or caused the removal of, the vehicle shall cause the disposal of the vehicle under this section, subject to all of the following requirements:

(a) Not less than 72 hours before the vehicle is removed, the peace officer or the authorized public employee has securely attached to the vehicle a distinctive notice which states that the vehicle will be removed by the public agency. This subdivision does not apply to abandoned vehicles removed pursuant to subdivision (d) of Section 22669 which are determined by the public agency to have an estimated value of one hundred dollars ($100) or less.

(b) Immediately after removal of the vehicle, the public agency which removed, or caused the removal of, the vehicle shall notify the Stolen Vehicle System of the Department of Justice in Sacramento of the removal.

(c) The public agency which removed, or caused the removal of, the vehicle or, at the request of the public agency, the lienholder shall obtain a copy of the names and addresses of all persons having an interest in the vehicle, if any, from the Department of Motor Vehicles either directly or by use of the California Law Enforcement Telecommunications System. This subdivision does not require the public agency or lienholder to obtain a copy of the actual record on file at the Department of Motor Vehicles.

(d) Within 48 hours of the removal, excluding weekends and holidays, the public agency which removed, or caused the removal of, the vehicle or, at the request of the public agency, the lienholder shall send a notice to the registered and legal owners at their addresses of record with the Department of Motor Vehicles, and to any other person known to have an interest in the vehicle. A notice sent by the public agency shall be sent by certified or first-class mail, and a notice sent by the lienholder shall be sent by certified mail. The notice shall include all of the following information:

(1) The name, address, and telephone number of the public agency providing the notice.

(2) The location of the place of storage and description of the vehicle which shall include, if available, the vehicle make, license plate number, vehicle identification number, and mileage.

(3) The authority and purpose for the removal of the vehicle.

(4) A statement that the vehicle will be disposed of 15 days from the date of the notice.

(5) A statement that the owners and interested persons, or their agents, have the opportunity for a poststorage hearing before the public agency which removed, or caused the removal of, the vehicle to determine the validity of the storage if a request for a hearing is made in person, in writing, or by telephone within 10 days from the date of notice; that, if the owner or interested person, or his or her agent, disagrees with the decision of the public agency, the decision

may be reviewed pursuant to Section 11523 of the Government Code; and that during the time of the initial hearing, or during the time the decision is being reviewed pursuant to Section 11523 of the Government Code, the vehicle in question shall not be disposed of.

(e) (1) Any requested hearings shall be conducted within 48 hours of the request, excluding weekends and holidays. The public agency which removed the vehicle may authorize its own officers to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle.

(2) Failure of either the registered or legal owner or interested person, or his or her agent, to request or to attend a scheduled hearing shall satisfy the poststorage validity hearing requirement of this section.

(f) The public agency employing the person, or utilizing the services of a contractor or franchiser pursuant to subdivision (b) of Section 22669, which removed, or caused the removal of, the vehicle and which directed any towing or storage, shall be responsible for the costs incurred for towing and storage if it is determined in the hearing that reasonable grounds to believe that the vehicle was abandoned are not established.

(g) No authorization for disposal may be issued by the public agency which removed, or caused the removal of, the vehicle to a lienholder who is storing the vehicle prior to the conclusion of a requested poststorage hearing or any judicial review of that hearing.

(h) If, after 15 days from the notification date, the vehicle remains unclaimed and the towing and storage fees have not been paid, and if no request for a poststorage hearing was requested or a poststorage hearing was not attended, the public agency which removed, or caused the removal of, the vehicle shall provide to the lienholder who is storing the vehicle, on a form approved by the Department of Motor Vehicles, authorization to dispose of the vehicle. The lienholder may request the public agency to provide the authorization to dispose of the vehicle.

(i) If the vehicle is claimed by the owner or his or her agent within 15 days of the notice date, the lienholder who is storing the vehicle may collect reasonable fees for services rendered, but may not collect lien sale fees as provided in Section 22851.12.

(j) Disposal of the vehicle by the lienholder who is storing the vehicle may only be to a licensed dismantler or scrap iron processor. A copy of the public agency's authorization for disposal shall be forwarded to the licensed dismantler within five days of disposal to a licensed dismantler. A copy of the public agency's authorization for disposal shall be retained by the lienholder who stored the vehicle for a period of 90 days if the vehicle is disposed of to a scrap iron processor.

(k) If the names and addresses of the registered and legal owners of the vehicle are not available from the records of the Department of Motor Vehicles, either directly or by use of the California Law Enforcement Telecommunications System, the public agency may

issue to the lienholder who stored the vehicle an authorization for disposal at any time after the removal.

The lienholder may request the public agency to issue an authorization for disposal after the lienholder ascertains that the names and addresses of the registered and legal owners of the vehicle are not available from the records of the Department of Motor Vehicles either directly or by use of the California Law Enforcement Telecommunications System.

(*l*) A vehicle disposed of pursuant to this section shall not be reconstructed or made operable, unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates, pursuant to Section 5004, in which case the vehicle may be reconstructed or made operable.

SEC. 6. Section 5 of this bill incorporates amendments to Section 22851.3 of the Vehicle Code proposed by both this bill and AB 97. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 22851.3 of the Vehicle Code, and (3) this bill is enacted after AB 97, in which case Section 4 of this bill shall not become operative.

SEC. 7. Section 2 of this bill incorporates amendments to Section 221 of the Vehicle Code proposed by both this bill and AB 1420. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 221 of the Vehicle Code, and (3) this bill is enacted after AB 1420, in which case Section 1 of this bill shall not become operative.

CHAPTER 1134

An act to add Section 68553 to the Government Code, relating to judges.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. The Legislature hereby finds and declares that there is a special need to require training programs on family law for judges, referees, commissioners, mediators, and others who perform duties in family law matters because more citizens are affected by family law proceedings than any other type of judicial proceedings. Further, family law matters comprise approximately one-half of all civil court filings in most counties, family law presents highly complex and diverse issues, family law can involve protracted litigation and massive use of court time and resources, and family law has a profound impact on all the involved parties, on taxpayers, and on the future of society.

It is the intent of the Legislature that the training program for

judges be at least 30 hours per year.

SEC. 2. Section 68553 is added to the Government Code, to read:

68553. The Judicial Council shall establish judicial training programs for judges, referees, commissioners, mediators, and others as deemed appropriate who perform duties in family law matters.

The training shall include a family law session in any orientation session conducted for newly appointed or elected judges and an annual training session in family law.

The training shall include instruction in all aspects of family law, including effects of gender on family law proceedings and the economic effects of dissolution on the involved parties.

CHAPTER 1135

An act to amend Section 14501 of, and to repeal Section 14504 of, the Welfare and Institutions Code, relating to family planning.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 14501 of the Welfare and Institutions Code is amended to read:

14501. The Office of Family Planning shall have all of the following functions, powers, and duties:

(a) To make available to citizens of the state of childbearing age comprehensive medical knowledge, assistance and services relating to the planning of families.

(b) To consult with state and local agencies which provide or administer family planning services and to participate in the formulation of regulations and other policy decisions governing the provision or administration of family planning services pursuant to state law or regulation.

(c) To establish goals and priorities for all state agencies providing or administering family planning services.

(d) To coordinate all family planning services and related programs conducted or administered by state agencies with the federal government so as to maximize the availability of these services by utilizing all available federal funds.

(e) To conduct a survey of all of the existing facilities within the state having to do with family planning and infertility and the rendering of advice and assistance on birth control techniques and information.

(f) To evaluate all existing programs and to establish in each county a viable program for the dispensation of family planning, infertility and birth control information and techniques.

(g) To develop and administer scientific investigation into

problems of infertility and existing and new family planning and birth control techniques.

(h) To survey, evaluate, and establish programs of professional education and training for physicians, nurses, medical and nursing students, and other health care practitioners in rendering advice on family planning, infertility and birth control techniques and information.

(i) To enter into contracts and agreements with individuals, colleges, universities, associations, corporations, municipalities and other units of government as may be deemed necessary and advisable to carry out the general intent and purposes of this article which may provide for payment by the state within the limit of funds available for material, equipment and services.

(j) To submit an annual report to the Legislature including, but not limited to, the subjects specified above.

(k) To annually update and analyze family planning data. The data shall include, but not be limited to, the following:

(1) Client number.
(2) Ethnicity.
(3) Family size.
(4) Method.
(5) Family income.
(6) Service type.
(7) Birthdate.
(8) Total billing amount.
(9) Pay source.
(10) Date of visit.
(11) Site number.
(12) County of residence.
(13) Updated estimates of women in need of subsidized family planning services from the federal government, when available, for all Office of Family Planning clinical service contractors by county of service, as well as statewide totals.

The Office of Family Planning, for the purposes of policy development and sound fiscal planning, shall report to the Legislature annually on the results of the update and analysis required by this subdivision. This annual report shall include data collected during the fiscal year ending June 30 of the preceding calendar year. The report shall be received and reviewed by the Legislature every calendar year during the month of February, commencing February 1989.

SEC. 2. Section 14504 of the Welfare and Institutions Code is repealed.

CHAPTER 1136

An act to repeal and add Article 2 (commencing with Section 78030) of Chapter 1 of Part 48 of the Education Code, relating to community colleges.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Article 2 (commencing with Section 78030) of Chapter 1 of Part 48 of the Education Code is repealed.

SEC. 2. Article 2 (commencing with Section 78030) is added to Chapter 1 of Part 48 of the Education Code, to read:

Article 2. Interdistrict Attendance

78030. (a) The Legislature finds and declares as follows:

(1) Many community college students desire to attend, and do attend, community colleges outside their district of residence.

(2) Prior to the passage of Proposition 13, interdistrict attendance restrictions were necessary to provide for payments from the district of residence to a district of attendance whenever significant numbers of students were involved.

(3) The fact that community colleges are now substantially reliant upon the state for financial resources rather than upon local residents compels a reexamination of the concern over subsidization of the attendance of nondistrict residents.

(4) Community college district boundaries are often irregular in configuration and require many students to attend community colleges in less convenient locations when interdistrict attendance restrictions are imposed.

(5) Transportation is the most significant cost facing community college students with regard to college attendance.

(6) It is not in the best interests of the people of the State of California that attendance at a community college be restricted to a person's district of residence.

(b) It is the intent of the Legislature in enacting this article to provide for the unrestricted enrollment and attendance of students at community colleges, thereby providing each resident of the state an equal opportunity to attend the community college of his or her choice.

78031. (a) Subject to Article 1 (commencing with Section 76000) of Chapter 1 of Part 47, a district resident, as defined for purposes of Part 41 (commencing with Section 68000), shall be admitted to a community college in another district without regard to district boundaries.

(b) No district shall restrict the admission of its residents into a

community college of another district, nor shall it restrict the admission of residents of another district into its community college or colleges, except as authorized under Section 78032.

78032. (a) Notwithstanding Section 78031, the Board of Governors of the California Community Colleges may, pursuant to a finding that one or more of the following concerns in any community college district requires the restriction of interdistrict attendance, impose one or more restrictions upon interdistrict attendance with regard to that district as it may deem necessary:

(1) Protection of the financial health of the district, and of educational program integrity, including, but not limited to, maintenance of the appropriate quality and scope of student educational opportunity.

(2) The need to avoid overcrowding, in light of the available space in the district.

(3) The priority that resident students not be displaced by students who do not reside in the district.

(4) The avoidance of any serious disruption in the ethnic balance of the student population of any affected district.

(b) No restriction adopted under subdivision (a) shall apply for a period of longer than two years, absent additional action of the board of governors to continue that restriction.

(c) (1) No community college district shall recruit any student who is a resident of any other community college district, except where an agreement exists between those districts authorizing each district to recruit within the boundaries of the other district.

(2) If, pursuant to an agreement as described in paragraph (1), a community college district recruits within the boundaries of another community college district, it shall recruit from all high schools within that other district, and may not favor any high schools over other high schools within that other district unless it is intended to improve the racial balance of the recruiting community college district.

(3) "Recruiting," for purposes of this section, means either or both of the following actions by a community college district, where the apparent purpose is to encourage student attendance in that district:

(A) The mailing by a community college district, to any address not within its boundaries, of class schedules or other written information, except to current or former students of the district or at the addressee's request.

(B) The personal visit by a representative of the community college district to any high school, except in response to an invitation from the school district of which the high school is a part.

"Recruiting" does not include, for this purpose, any information provided by a community college district through any newspaper or other publication that is not published or otherwise issued by the district, and for which distribution is not limited to residents of the district.

(d) The board of governors shall authorize the Chancellor of the

California Community Colleges to retain in any fiscal year an amount of up to 5 percent of the appropriation calculated under Chapter 5 (commencing with Section 84700) of Part 50 as a penalty applicable to any community college district that violates this article, including, but not limited to, any restriction imposed by the board of governors under this section. Any funds retained pursuant to this subdivision shall revert to the General Fund.

(e) The board of governors shall annually report to the Legislature and the Governor regarding any restrictions imposed pursuant to subdivision (a), statistical information relating to interdistrict attendance, and any retention of funds pursuant to subdivision (c).

78033. Nothing in this act shall abrogate any contract existing between any school districts on the effective date of this chapter. Any contractual provision in any contract in effect on the effective date of this chapter shall prevail over any conflicting provision in this chapter until the termination date of the contract, or upon termination by mutual agreement of the parties, whichever occurs first.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1137

An act to add Sections 54060.1, 54060.2, and 54060.3 to, add Article 2.5 (commencing with Section 78040) of Chapter 1 of Part 48 of, and to repeal and add Section 54060 of, the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 54060 of the Education Code is repealed.

SEC. 2. Section 54060 is added to the Education Code, to read:

54060. For the 1987–88 fiscal year, the Superintendent of Public Instruction shall do the following:

(a) Using the latest available data as of April 1, 1987, identify each unified school district that meets all of the following criteria:

(1) Has a factor of 0.9 or greater calculated pursuant to subdivision

(a) of Section 54023.

(2) Has more than 12,022 pupils in average daily attendance.

(3) Has a count of children from families receiving benefits pursuant to the Aid to Families with Dependent Children program that, when multiplied by the district factor determined in paragraph (1), yields a product of 3,731 or more.

(b) For each school district identified pursuant to subdivision (a), the superintendent shall make the following calculations:

(1) Multiply the district's Aid to Families with Dependent Children count by the factor determined in paragraph (1) of subdivision (a).

(2) Multiply the product determined in paragraph (1) by the district's base revenue limit per unit of average daily attendance computed pursuant to subdivision (b) of Section 42238.

(3) Multiply the product determined in paragraph (2) by a factor of 1.1 if it is a district that has an average daily attendance greater than 58,800. That product for each district is that district's gross entitlement for urban impact aid.

(4) Total the gross entitlements determined in paragraph (3) for each school district identified pursuant to subdivision (a) and divide that sum into the amount appropriated by the Legislature for the purposes of this section in the 1987–88 fiscal year.

(5) Multiply the gross entitlement determined in paragraph (3) by the quotient determined in paragraph (4). That product for each district is the 1987–88 maximum allocation for urban impact aid.

SEC. 3. Section 54060.1 is added to the Education Code, to read:

54060.1. (a) The Superintendent of Public Instruction shall compare the 1987–88 maximum allocation calculated for each school district pursuant to Section 54060 to the allocation that district received in 1986–87 pursuant to Section 54060 as that section was in effect during the 1986–87 fiscal year.

(b) If the 1987–88 maximum allocation is less than the 1986–87 allocation received by a district, the superintendent shall allocate the lesser amount to that district; however, no district shall receive an allocation less than 90 percent of the district's 1986–87 allocation.

(c) The superintendent shall calculate the total net savings derived from all districts in which the 1987–88 allocation determined pursuant to subdivision (b) is less than the 1986–87 allocation.

(d) If the 1987–88 maximum allocation is greater than or equal to the 1986–87 allocation received by a district, the superintendent shall allocate to that district the sum of the following:

(1) The allocation received by the district in 1986–87.

(2) The amount determined by allocating the total net savings calculated pursuant to subdivision (c) on a pro rata basis to each district in proportion to the amount by which the 1987–88 maximum allocation exceeds the allocation received by that district in 1986–87.

SEC. 4. Section 54060.2 is added to the Education Code, to read:

54060.2. For the 1987–88 fiscal year, the Superintendent of Public Instruction shall do the following:

(a) Using the latest available data as of April 1, 1987, identify each high school district and its elementary school feeder districts that, if the elementary districts had been unified with the high school district, would have all of the following:

(1) A composite factor of 0.9 or greater calculated pursuant to subdivision (a) of Section 54023.

(2) More than 12,022 pupils in average daily attendance.

(3) A combined count of children from families receiving benefits pursuant to the Aid to Families with Dependent Children program which, when multiplied by the composite factor determined in paragraph (1), yields a product of 3,731 or more.

(b) For each school district identified pursuant to subdivision (a), the superintendent shall make the following calculations:

(1) Multiply the district's Aid to Families with Dependent Children count by the factor determined in paragraph (1) of subdivision (a).

(2) Multiply the product determined in paragraph (1) by the district's base revenue limit per unit of average daily attendance computed pursuant to subdivision (b) of Section 42238.

(3) Multiply the product determined in paragraph (2) by a factor of 1.1 if the average daily attendance in paragraph (2) of subdivision (a) is greater than 58,800. That product for each district is the combined gross entitlement for urban impact aid.

(4) Total the gross entitlements determined in paragraph (3) for each school district identified pursuant to subdivision (a) and divide that sum into the amount appropriated by the Legislature for the purposes of this section in the 1987–88 fiscal year.

(5) Multiply the gross entitlement determined in paragraph (3) by the quotient determined in paragraph (4). That product for each district is the 1987–88 maximum allocation for urban impact aid.

SEC. 5. Section 54060.3 is added to the Education Code, to read:

54060.3. (a) The Superintendent of Public Instruction shall compare the 1987–88 maximum allocation calculated for each school district pursuant to Section 54060.2 to the allocation that district received in 1986–87 pursuant to Section 54060 as that section was in effect during the 1986–87 fiscal year.

(b) If the 1987–88 maximum allocation is less than the 1986–87 allocation received by a district, the superintendent shall allocate the lesser amount to that district; however, no district shall receive an allocation less than 90 percent of the district's 1986–87 allocation.

(c) The superintendent shall calculate the total net savings derived from all districts in which the 1987–88 allocation determined pursuant to subdivision (b) is less than the 1986–87 allocation.

(d) If the 1987–88 maximum allocation is greater than or equal to the 1986–87 allocation received by a district, the superintendent shall allocate to that district the sum of the following:

(1) The allocation received by the district in 1986–87.

(2) The amount determined by allocating the total net savings calculated pursuant to subdivision (c) on a pro rata basis to each

district in proportion to the amount by which the 1987–88 maximum allocation exceeds the allocation received by that district in 1986–87.

SEC. 6. (a) There is hereby established a task force on urban impact aid, which shall consist of five members appointed by the Governor, two members appointed by the Speaker of the Assembly, and two members appointed by the Senate Rules Committee. The task force shall do all of the following:

(1) Review the rationale and purposes of urban impact aid. As part of this review, the task force shall identify the increased costs, if any, associated with providing educational services in school districts with high concentrations of educationally disadvantaged, low-income, welfare-dependent, or limited English-proficient pupils.

(2) Review those factors and the formulas used as the basis for providing urban impact aid to school districts in recognition of high concentrations of those pupils. and determine whether those factors and formulas accurately and fairly measure the educational and fiscal needs associated with that impaction. In completing this review, the task force shall consider the relationship between the allocation of funds pursuant to Sections 54060 and 54060.2 and any increases or reductions in demonstrated need for funding in each school district and statewide since the enactment of Chapter 894 of the Statutes of 1977.

(3) Propose, if appropriate, for consideration by the Legislature, criteria for the allocation of general aid to school districts in recognition of the impaction of educationally disadvantaged pupils. If criteria are proposed, the task force shall identify the relationship between increases or decreases in the allocation of funds to each school district and the pupil or district characteristics that reflect educational and fiscal needs in that district.

(b) The task force shall report its findings and recommendations to the fiscal and education policy committees of the Senate and the Assembly on or before March 1, 1988.

SEC. 7. The Legislature hereby finds and declares that it is not within the interests of the people of the State of California that attendance at a public community college be restricted to a person's district of residence. The Legislature recognizes that the vast majority of funding for community college districts is currently provided by the state, rather than from local revenues. The Legislature hereby further recognizes that community college district boundaries are often irregular in configuration, requiring many students to attend community colleges in less convenient locations when interdistrict attendance restrictions are imposed.

It is the intent of the Legislature in enacting this article to provide for the unrestricted enrollment and attendance of students at community colleges, thereby providing each resident of the state an equal opportunity to attend the community college of their choice.

SEC. 8. Article 2.5 (commencing with Section 78040) is added to Chapter 1 of Part 48 of the Education Code, to read:

Article 2.5. Interdistrict Attendance

78040. Subject to Article 1 (commencing with Section 76000) of Chapter 1 of Part 47, a district resident, as defined for purposes of Part 41 (commencing with Section 68000), shall be admitted to a community college in another district without regard to district boundaries, unless the Board of Governors of the California Community Colleges finds that compelling, extenuating circumstances exist under which the application of this policy would be substantially detrimental to the opportunity of students to obtain a quality education.

78041. The Board of Governors of the California Community Colleges shall adopt any guidelines or regulations necessary to implement the intent of this article.

78042. (a) The Board of Governors of the California Community Colleges may, pursuant to a finding that one or more of the following concerns in any community college district requires the restriction of interdistrict attendance, impose one or more restrictions upon interdistrict attendance with regard to that district as it may deem necessary:

(1) Protection of the financial health of the district, and of educational program integrity, including, but not limited to, maintenance of the appropriate quality and scope of student educational opportunity.

(2) The need to avoid overcrowding, in light of the available space in the district.

(3) The priority that resident students not be displaced by students who do not reside in the district.

(4) The avoidance of any serious disruption in the ethnic balance of the student population of any affected district.

(b) No restriction adopted under subdivision (a) shall apply for a period of longer than two years, absent additional action of the board of governors to continue that restriction.

(c) (1) A district shall not actively recruit out-of-district students unless there is agreed to reciprocity of recruiting; that is, an agreement by the affected districts to recruit within the district of the other.

(2) If, pursuant to an agreement as described in paragraph (1), a community college district recruits within the boundaries of another community college district, it shall recruit from all high schools within that other district, and may not favor any high schools over other high schools within that other district unless it is intended to improve the racial balance of the recruiting community college district.

(3) Recruiting is defined as either or both of the following: (A) the out-of-district mailing of class schedules or other written materials, except to current or former students of the district or at the addressee's request and (B) the personal visit by a representative of the community college district to any high school, except in response

to an invitation from the school district of which the high school is a part, where the personal visit is intended to encourage student attendance in that community college district.

General media advertising such as radio, television, or in newspapers with an overlapping readership, shall not be prohibited.

If districts agree to recruiting, they shall be prohibited from "selective" recruiting; that is, recruiting in certain high schools, but not in others.

(d) The board of governors shall authorize the Chancellor of the California Community Colleges to retain in any fiscal year an amount of up to 5 percent of the appropriation calculated under Chapter 5 (commencing with Section 84700) of Part 50 as a penalty applicable to any community college district that violates this article, including, but not limited to, any restriction imposed by the board of governors under this section. Any funds retained pursuant to this subdivision shall revert to the General Fund.

(e) The board of governors shall annually report to the Legislature and the Governor regarding any restrictions imposed pursuant to subdivision (a) and statistical information relating to interdistrict attendance.

SEC. 9. Nothing in this act shall abrogate any contract existing between districts on the effective date of this act. Any contractual provision in any contract in effect on the effective date of this act shall prevail over any conflicting provision in this act until the termination date of the contract, or upon termination by mutual agreement of the parties, whichever occurs first.

SEC. 10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 11. The sum of eighty-six million six hundred thirty-five thousand dollars ($86,635,000) is hereby appropriated from the General Fund to Section A of the State School Fund for allocation as follows in the 1987–88 fiscal year:

(a) The sum of sixty-six million five hundred nineteen thousand dollars ($66,519,000) for the purpose of Sections 54060 and 54060.1 of the Education Code.

(b) The sum of nine million six hundred eighty-one thousand dollars ($9,681,000) for the purpose of Sections 54060.2 and 54060.3 of the Education Code.

(c) The sum of ten million four hundred thirty-five thousand dollars ($10,435,000) for the purpose of Section 54061 of the Education Code.